No. 4249

United States

Circuit Court of Appeals

For the Ninth Circuit.

BEET GROWERS SUGAR COMPANY, a Corporation,

Appellant,

vs.

COLUMBIA TRUST COMPANY, a Corporation, as Trustee, E. D. HASHIMOTO, Intervenor, and A. V. SCOTT, Receiver,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the District of Idaho, Eastern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Index.

In the District Court of the United States for the District of Idaho, Eastern Division.

IN EQUITY—No. 364.

COLUMBIA TRUST COMPANY, as Trustee,
Plaintiff,

vs.

BEET GROWERS SUGAR COMPANY and FORT DEARBORN TRUST & SAVINGS BANK, as Trustee,
Defendants.

COMPLAINT.

Columbia Trust Company, a corporation organized and existing under the laws of the State of Utah and a citizen of said State, having its principal office at Salt Lake City, in said State, brings this its bill of complaint against Beet Growers Sugar Company, a corporation organized and existing under the laws of the State of Idaho, and a citizen and resident of said State, having its principal office in the City of Rigby, in the County of Jefferson, in said State, and, for cause of action against the said defendant, alleges:

I.

That at all the times hereinafter mentioned, the plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Utah and is a citizen and resident of said State, having its principal residence and place of business therein in the city and county of Salt

Lake; that at all the times hereinafter mentioned, the said defendant, Beet Growers Sugar Company, was and now is a citizen and resident of the State of Idaho, having its principal office and place of business in the city of Rigby, County of Jefferson, in said State.

II.

That this suit is one of a civil nature, in equity, between citizens of different states, and that the amount in controversy herein exceeds the sum or value of Three Thousand Dollars ($3,000.00), exclusive of interest and costs. [1*]

III.

That on, to wit: the 1st day of October, A. D. 1919, the defendant, Beet Growers Sugar Company, in the exercise of its corporate power and pursuant to resolutions theretofore duly adopted by its board of directors, at a meeting thereof regularly called and held, made and executed as of said date its first mortgage, seven per cent (7%), gold bonds in the aggregate principal amount of Five Hundred Thousand Dollars ($500,000.00) of which two hundred fifty (250) bonds, numbered 1 to 250 inclusive, for the principal amount of One Thousand Dollars ($1,000.00) each, were designated as "Series A"; four hundred (400) bonds, numbered 1 to 400 inclusive, each for the principal amount of Five Hundred Dollars ($500.00), were designated as "Series B"; and five hundred (500) bonds, numbered 1 to

*Page-number appearing at foot of page of original certified Transcript of Record.

500 inclusive, each for the principal amount of One Hundred Dollars ($100.00), were designated as "Series C"; that in and by each of said bonds, the said Beet Growers Sugar Company promised and agreed to pay to "the bearer," or, if registered, to the registered holder thereof, on the 1st day of October, 1929, at the office of the plaintiff herein, in Salt Lake City, Utah, or at The Hanover National Bank, in the city and county of New York, the amount stated therein, in gold coin of the United States of America, of or equal to the then present standard of weight and fineness, and also to pay the interest thereon semi-annually at the said office of the plaintiff herein or at the said The Hanover National Bank, at the rate of seven per cent (7%) per annum, in like gold coin, on the 1st days of April and October of each year, on presentation or surrender of the interest coupons attached to said bonds as they severally mature; that the form and tenor of said bonds so executed and issued by the said defendant are more particularly set forth in the copy of the deed of trust and mortgage executed by the defendant, as security for the payment thereof, to which reference is hereinafter made. [2]

"Defendant Beet Growers Sugar Company executed its deed of trust and mortgage covering all its property, both real and personal for the security of its bonds." [3]

V.

That thereafter all of said bonds, aggregating Five Hundred Thousand Dollars ($500,000.00) in

principal amount, as aforesaid, were duly authenticated by indorsement thereon of the certificate of plaintiff herein, as trustee, and, pursuant to resolution of the board of directors of the defendant, Beet Growers Sugar Company, delivered by the plaintiff to said defendant, which, as the plaintiff is informed and believes, negotiated, sold, delivered and/or pledged all or substantially all of same to diverse persons, firms, partnerships and corporations, who thereby became and now are *bona fide* holders and purchasers thereof, for value. [4]

VII.

That there were listed and assessed by the duly constituted authorities of said Jefferson County taxes upon the property covered by said deed of trust and mortgage, hereinbefore particularly described, for the calendar year 1920, in the sum of approximately Twenty Thousand Five Hundred Dollars ($20,500.00) and for the calendar year 1921 in the sum of Sixteen Thousand Three Hundred Dollars ($16,300.00), which became delinquent on the fourth Monday in December in the years for which the said taxes were levied, respectively, and which have not been paid by the defendant company in whole or in part; that, with interest and penalties, the said taxes amount, at the date hereof, [7] to approximately Forty-four Thousand Dollars ($44,000.00), and are a lien upon said property prior and superior to that of the said deed of trust and mortgage; and, further, that, altho requested so to do, the defendant company has wholly failed to deposit with the plaintiff, as trustee, policies of

insurance, if any it has, upon the buildings and other improvements on said property, as required by the covenants in said deed of trust and mortgage hereinbefore set forth; in consequence whereof the plaintiff, at the request of the owners and/or legal holders of more than twenty-five per cent (25%) of the bonds secured by said indenture and now outstanding, has notified the defendant of its default in respect to the performance of its said covenants and of its, the plaintiff's election to declare, and the plaintiff does hereby declare, all of the bonds secured by said indenture and now outstanding, together with the accrued interest thereon, to be now due and payable, anything in said bonds or in said indenture to the contrary notwithstanding, and has made demand upon the defendant for payment thereof, with which demand the defendant has failed and refused to comply either in whole or in part; that, at the time of filing this complaint, the defendant is not advised as to the total amount of said bonds which have been negotiated by the defendant and now issued and outstanding, nor as to the amount of delinquent interest which is due on the bonds so issued and outstanding, and does not allege the same for that reason.

VIII.

That, in the course of its business operations during the past two years, the defendant has contracted a large amount of indebtedness to diverse persons and corporations, which it is wholly unable to meet owing to the fact that it has disposed of

all or practically all of its liquid assets and upon which there is grave danger of actions in attachment being commenced in the immediate future; and that, unless a receiver is appointed to [8] take possession and charge of the property covered by the lien of said indenture and the rents, issues and profits thereof, as provided in said deed of trust and mortgage, pending foreclosure of said deed of trust and mortgage, a material part of the value of said security and the priority of the lien thereof on the personal property covered thereby is liable to be lost or destroyed, and the beneficiaries under said deed of trust and mortgage will thereby be caused great and irreparable damage; for all of which reasons a receiver should be appointed to preserve the *corpus* as well as the rents, issues and profits of said property for the satisfaction of said indebtedness; that no proceedings at law or in equity for the collection of said indebtedness or the protection or foreclosure of said security, save this suit, have been taken or commenced by the plaintiff, nor, as it is informed and believes, by any holder of the bonds or interest coupons secured by said indenture, and that the plaintiff is proceeding herein to foreclose said deed of trust and mortgage and to exercise all the rights, powers and authority in it vested under and by virtue of said indenture, for the benefit of each and all the holders of the bonds secured thereby; that under and by virtue of the terms and provisions of said deed of trust and mortgage, the plaintiff is entitled to recover all sums expended or to be ex-

pended by it in connection with this suit and/or the protection of the right created thereby, including a reasonable attorney's fee and a reasonable compensation to itself for its services in this behalf and for which it is entitled to a lien upon the proceeds of said property in the event of sale of the same under decree of foreclosure, prior and superior to the said bonds and interest coupons thereto attached; and that, because of said defaults on the part of said defendant, the plaintiff has been compelled to employ attorneys to commence and prosecute this foreclosure proceeding and to protect the rights and interests of the holders of bonds secured by said deed of trust and mortgage and has agreed to pay the attorneys so employed by it such reasonable fee as the court may allow [9] in the premises; that a reasonable fee for such legal services rendered and to be rendered by attorneys for the plaintiff is the sum of Fifteen Thousand Dollars ($15,000.00), and that a reasonable compensation to be allowed the plaintiff for its services in this behalf is the sum of Ten Thousand Dollars ($10,000.00), together with its actual expenses in such behalf paid, laid out and expended.

WHEREFORE, the premises considered, and for as much as the plaintiff is without remedy at law and can have relief only in a court of equity, in which matters of this nature are properly cognizable, the plaintiff files this its bill of complaint, and prays that it be adjudged and decreed by this honorable court,

FIRST. That the deed of trust and mortgage so executed and delivered by the defendant Beet Growers Sugar Company to the plaintiff and under which the plaintiff is now trustee, as hereinbefore set forth, may be decreed to be a first lien upon all property, real, personal and mixed therein particularly described or subsequently acquired by the defendant, prior and superior to any and all liens or claims whatsoever, and that the said defendant, Beet Growers Sugar Company, may be adjudged and decreed to pay unto the plaintiff all moneys now due or to become due and payable on its said bonds and/or under its said mortgage and deed of trust, and that, in default thereof, all and singular the said mortgaged premises, with the appurtenances thereunto belonging or in any manner appertaining, and all other property subsequently acquired by the defendant and covered by the lien of said indenture, may be sold under decree of this honorable court, and that, out of the moneys arising from the sale thereof, after deducting the proceeds of any such sale, just allowance for all expenses of such sale, including attorneys' and trustee's fees and all expenses incurred by the plaintiff in the premises, whether in the way of payment of taxes and assessments on the said premises, or any part thereof, or otherwise, and to apply the remainder of the proceeds in the manner particularly provided in said indenture;

SECOND. That a receiver may be appointed to take possession [10] of said mortgage premises and personal property pending the foreclosure of

said deed of trust and mortgage, and during the period of redemption allowed by the defendant and its creditors, if any, according to the usual course and practice of this court, with the usual powers conferred upon receivers in like cases; that said receiver be empowered and directed to take possession of said property and to receive the rents, issues and profits thereof, to lease and/or operate all or any part of said property under the orders and direction of this court, and to account for any earnings received therefrom (after deducting the expense of operating the same, taxes, assessments and charges upon said property), and to hold and apply the same for the interest and benefit of the holders of said bonds, as provided in said deed of trust and mortgage and as directed by this court;

THIRD. That a writ of injunction may be issued pending final decree in this action, according to the practice and under the seal of this court, directing and commanding the defendant, its agents and employees to deliver possession of such mortgaged premises and personal property and to make such transfers thereof to the receiver to be appointed by this court as may be necessary to invest the said receiver with complete possession and control thereof, and also enjoining and restricting the said defendant, its agents, attorneys and employees, and all persons whomsoever, from interfering with the transfer, sell or other disposal of any of the property covered by said mortgage and deed of trust, or coming into the possession of the said receiver or from taking possession of, levying upon or at-

tempting to sell, either by judicial process or otherwise, any portion of the property placed in or covered by said mortgage and deed of trust;

FOURTH. That if, upon the foreclosure and sale of the mortgage property and premises, the same shall fail to realize a sum sufficient to pay the amount of the bonds aforesaid and the interest found to be due thereon, after deducting the cost and expense of executing its trust, that it may have judgment against the said defendant, Beet Growers Sugar Company as the maker of [11] said coupons and bonds, for whatever deficiency there may be in the payment thereof, with the right of execution; and for such further relief in the premises as the nature and circumstances of this suit may require, and as to this honorable court may seem *most* and proper.

PLAINTIFF FURTHER PRAYS, That a writ of subpoena may be issued out of and under the seal of this court directed to the said defendant, Beet Growers Sugar Company, therein and thereby commanding it, the defendant, at a certain time and under a certain penalty therein to be named, personally to appear before this honorable court, then and there to answer all and singular (but not under oath, answer under oath being hereby expressly waived) the matters aforesaid, and to stand, abide by and sustain such direction and decree as are

made herein and as to this court may seem equitable and just.

COLUMBIA TRUST COMPANY,
By WM. STORY, Jr.,
Its Vice-president.

WM. STORY, Jr.,
Address: Salt Lake City, Utah.
Solicitor for Plaintiff.

[Duly verified] [12]

EXHIBIT "A."

DEED OF TRUST AND MORTGAGE.

THIS INDENTURE, made and entered into this 20th day of April, 1920, by and between BEET GROWERS SUGAR COMPANY, a corporation duly organized and existing under the laws of the State of Idaho, hereinafter called the "Company," the party of the first part, and the Columbia Trust Company, a corporation of Salt Lake City, Utah, hereinafter called the "Trustee," the party of the second part, WITNESSETH:

WHEREAS, "Company" has full power and authority under its articles of incorporation, its by-laws and the laws of the State of Idaho, to borrow money, to make, execute, issue, deliver and dispose of the bonds hereinafter described, and to secure the payment of the principal sums of and interest upon all said bonds by Deed of Trust and Mortgage, as hereinafter provided, and to do, covenant and obligate itself to do and perform all

the things, matters and obligations hereinafter provided; and,

WHEREAS, it is necessary for the "Company" to borrow money for its corporate purposes and to issue its bonds therefor, and mortgage its real property hereinafter described to secure the payments of said bonds and to that end it has duly authorized and directed an issue of its bonds to the aggregate principal amount of FIVE HUNDRED THOUSAND ($500,000.00) Dollars, and

WHEREAS, The Board of Directors of the "Company" has, duly, regularly and lawfully authorized the issue of said bonds and the making, executing, delivering and disposing of the same and the making, executing, acknowledging and delivering of this indenture by its President and Secretary in the name of and for said "Company" and the affixing of the corporate seal of "Company" to said bonds at meeting of "Company" convened and held and said authorization appears in the minutes of the "Company" and, the action of said Board of Directors has been approved by the stockholders of the "Company," and [13]

WHEREAS, All things necessary to make the said bonds, when duly certified by the Trustee, valid, binding and legal obligations of "Company" and to make this indenture a valid, legal and binding instrument for the security of said bonds have been done and performed and the issue of said bonds as in this indenture provided has been in all respects duly authorized, and

WHEREAS, said bonds, so approved and authorized by said stockholders and board of directors of "Company" are to be issued in three series as follows, to wit:

Series A, numbering 250 bonds, each bond in the principal sum of One Hundred ($100.00) Dollars.

Series B, numbering 400 bonds, each bond in the principal sum of Five Hundred ($500.00) Dollars.

Series C, numbering 500 bonds, each bond in the principal sum of One Hundred ($100.00) Dollars.

And each of said bonds is to be substantially in words and figures as follows, to wit: [14]

"Copy of form of bonds authorized and description of property mortgaged." [15–24]

ARTICLE 2.

PARTICULAR COVENANTS OF "COMPANY."

"Company" hereby covenants, warrants and agrees:

Section 1. That it is lawfully seized and possessed in fee simple of all the aforesaid mortgage premises and property generally or specifically described herein, and that it has good right and lawful authority to mortgage the same as provided herein.

Section 2. "Company" will, so long as any of the bonds issued hereunder are outstanding maintain its corporate existence and will maintain, preserve, renew and secure all the rights, properties, powers, privileges and franchises by it owned and will not do or suffer anything whereby its right or authority to carry on its business or any

right, interest, privilege, or franchise owned or exercised by it shall be forfeited, nor will "Company" go or suffer itself to be put into bankruptcy or insolvency.

Section 3. "Company" will, upon reasonable request, execute and deliver, or cause to be executed and delivered, such further instruments and assurances and do or cause to be done, such further acts as may be necessary or proper to carry out more effectually, or make more secure, the purposes of this indenture, especially to make subject to the lien hereof any real property and interest therein or appurtenant thereto, now owned or hereafter acquired by it, and to transfer to any new trustee the estate, powers, instruments and funds held in trust hereunder. [25]

Section 4. "Company" will at all times maintain, preserve and keep its property, mortgage hereunder, and every part thereof, with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and from time to time make all needful and proper repairs, so that at all times the value of the security of the bonds issued hereunder and the efficiency of the property hereby mortgaged shall be fully preserved and maintained.

Section 5. That it will keep all the property which is at any time covered by the indenture, fully insured, and will deliver to and deposit with said Trustee the policies of insurance.

Section 6. The company will pay and discharge before the same become delinquent, all taxes, as-

sessments, and other governmental charges, or other liens or charges, or other liens or charges lawfully imposed upon the property of premises at any time subject to the lien hereof, to the end that the priority of this indenture shall be fully preserved in respect to such property or premises.

Section 7. "Company" will pay the principal and interest of all the bonds issued hereunder according to the terms thereof, said payment to be made in gold coin of the United States of America of the present standard of weight and fineness, at the time, place and in the manner mentioned on said bonds, and will deliver to "Trustee" the amount of all payments of principal, and interest, ten days prior to the maturing thereof, without any deduction for any tax, charge or assessment. [26]

Section 8. "Company" will cause this indenture at all times to be kept recorded and filed as a mortgage, in order fully to preserve and protect the security of the bondholders and all rights of the "Trustee."

Section 9. "Company" will not suffer or permit any default to occur under this indenture, but will well and faithfully perform all the conditions, covenants and requirements hereof.

ARTICLE 3.

PROVISIONS FOR DEFAULT AND FORECLOSURE.

Section 1. In case (a) default shall be made in the payment of any of the principal or any of the interest money mentioned in the bonds and coupons

secured hereby, or any or either of them, and any such default shall continue for a period of three months, or (b) default shall be made by "Company" in the due observance or performance of any covenant, agreement, warranty or condition herein or in said bonds required to be kept by "Company," and any such default shall continue for three months, then after written notice thereof to "Company" from "Trustee" or from twenty-five per cent of the holders of all of the outstanding bonds secured by "Trustee," or its successors in trust, may, on its own motion, and shall upon written request of the holder or holders of twenty-five per cent in amount of the bonds hereby secured and then outstanding, declare the principal of all bonds hereby secured and then outstanding to be, and they shall thereupon immediately become due and payable, anything contained in said bonds or herein to the contrary notwithstanding, and may proceed to foreclose this indenture and to enforce by legal process the payment of said bonds and coupons by and against "Company," and to sell any or all of the property upon which this indenture shall be or create a lien or encumbrance, under the judgment or decree of a Court of competent jurisdiction. [27]

Section 2. In case of any legal proceedings to foreclose this indenture, the plaintiff or complainant therein shall be entitled to have the real property hereby granted and conveyed or intended so to be sold at judicial sale for or toward the satisfaction of the principal and accrued interest upon the outstanding bonds secured hereby and costs, disburse-

ments, and reasonable attorney's fees; and for the enforcement of the rights, liens and securities of "Trustee" and of the holders of bonds secured hereby; it is expressly understood that no incorporator, stockholder, officer or director shall be individually liable under any judgment secured.

Section 3. The purchase money, proceeds and avails of any such sale, and any moneys otherwise held by "Trustee" under any of the provisions hereof as part of the Trust estate, shall be applied as follows:

FIRST. To the payment of the costs and expenses of such sale and of any action or judicial proceeding including reasonable compensation of "Trustee," his agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the "Trustee" in managing, maintaining or operating the property hereby mortgaged, in discharging this trust and to the payment of all taxes, assessments or other liens superior to the lien of this indenture, except any taxes, assessments, or other superior liens to which such sales shall have been made subject.

SECOND. To the payment of the whole amount then unpaid upon the bonds hereby secured for principal and interest, and in case such proceeds shall not be sufficient to pay in full the whole amount so unpaid upon the said bonds, then to the payment of such principal and interest without preference or priority of principal over interest, interest over principal, or any installment of interest over any other installment of interest, ratably to the aggre-

gate of such principal and accrued [28] and unpaid interest.

THIRD. The surplus, if any, shall be paid to "Company."

Section 4. In case of any sale under the provisions hereof or by virtue of judicial proceedings, howsoever the same may have been instituted, whether for the foreclosure of this indenture or for any other purpose, any purchaser, for the purpose of making settlement or payment for the property purchased, shall be entitled to turn in any bonds, and any mature and unpaid coupons, hereby secured, on account of and as part of the purchase money, in order that there may be credited, as paid thereon, the sums payable out of the net proceeds of such sale to the holder of such bonds and coupons as his ratable share of such net proceeds, after allowing for the proportion of the total purchase price required to be paid in cash to pay the costs and expenses of sale and of such action or proceeding, or otherwise; and such purchaser shall be credited on account of the purchase price of the property purchased with the sum payable out of such net proceeds on the bonds and coupons so turned in; and at any such sale, any bondholders or "Trustee" may bid for and purchase such, or any of such, property and make payment therefor as aforesaid and upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability therefor.

Section 5. Upon filing a bill in equity or the commencement of any judicial proceedings to enforce any right of "Trustee" or of the bondholders

hereunder, "Trustee" shall be entitled to the appointment of a receiver of the property mortgaged and of the earnings, tolls, income, revenues, issues and profits thereof, with such power as the Court making such appointment shall confer. [29]

Section 6. No holder or holders of any bond or coupon hereby secured shall have any right to institute any suit, action or proceedings at law or in equity for the foreclosure of this indenture or for the execution of any trust hereof, or for any other remedy hereunder, unless the written notice to "Trustee" as hereinbefore provided shall have been given, and "Trustee" allowed a reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceedings, nor unless also such holder or holders shall have offered to "Trustee" adequate security and indemnity against costs, expenses, and liabilities to be incurred therein or thereby, and "Trustee" shall have unreasonably refused to comply with such request.

Section 7. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to "Trustee" is intended to be exclusive of any other remedy, but is cumulative and in addition to every other remedy hereunder or now or hereinafter existing at law, in equity, or by statute, as no action by "Trustee" shall preclude further or other action or proceedings hereunder or under the laws of the United States or the State of Idaho.

Section 8. No delay or omission of "Trustee" or of any bondholder hereby secured to exercise any

right or power hereunder accruing upon any default, shall impair any such right or power, or shall be construed to be or constitute a waiver of any such default, or any acquiescence therein, but every remedy and power given hereby may be exercised from time to time and as often as may be deemed expedient by "Trustee" or the bondholders, as the case may be. [30]

"Duties of trustee defined. [31, 32]

ARTICLE 5.

RIGHTS AND OPTION "COMPANY."

Section 1. While not in default hereunder "Company" shall be suffered and permitted to possess, use, and enjoy, and dispose of the products of all the real property, or interests therein, conveyed by this indenture, and to receive and use the rents, issues, income, product and profits thereof.

Section 2. "Company" may in addition to the payment of maturing bonds, at its option, pay all or any part of the unpaid principal of this issue of bonds at any day any interest coupon matures and redeem any bond at face or par value, together with accrued interest thereon, to such date, and a premium of three (3) per cent of the principal upon sixty (60) days prior written notice to "Trustee" and the bondholders; of intention so to do, and remittance to "Trustee" of the amount of such payment ten (10) days prior to such designated day of redemption.

ARTICLE 6.

DEFEASANCE.

Section 1. If at any time "Company" shall deliver, or cause to be delivered to "Trustee" for cancellation, all of the outstanding bonds secured by, together with all unpaid interest coupons, or if, when all the bonds hereby secured shall have become due and payable, "Company" shall well and truly pay or cause to be paid, the whole amount of the principal thereof and interest thereon, and any other sums payable by "Company" hereunder, and shall well and truly keep and perform all the things herein required to be kept and performed by "Company" according to the true intent and meaning hereof, then all the real property, rights and interests hereby conveyed shall revert to the Company, and all rights of "Trustee" shall cease and determine, and the estate, right, title and interest of "Trustee" therein or thereto shall cease, determine and become [33] void and of no effect, and on demand of "Company," and at "Company's" cost and expense, "Trustee" shall enter satisfaction hereof upon the records; otherwise this indenture shall continue and remain in full force, virtue and effect.

IN WITNESS WHEREOF, said Beet Growers Sugar Company has caused these presents to be signed in its corporate name by its president and impressed with its corporate seal attested by its secretary and the said The Columbia Trust Company has caused these presents to be signed in its corporate name by its president and impressed with

its corporate seal attested by its secretary all as of the day, year first above written.

[Seal]

BEET GROWERS SUGAR COMPANY.
By JAMES H. HAWLEY,
President,
Party of the First Part.
Attest: A. W. GABBEY,
Secretary.

THE COLUMBIA TRUST COMPANY.
[Seal] By F. B. COOK,
President,
Party of the Second Part.
Attest: G. M. SPOONER,
Secretary. [34]

"Duly acknowledged." [35, 36]

[Title of Court and Cause.]

AMENDMENT TO BILL OF COMPLAINT.

Comes now the plaintiff, and by leave of the Court, amends its bill of complaint herein by adding thereto the following paragraph after the fourth paragraph on page four thereof:

IV–A.

That at the time of the filing of this bill of complaint the defendant, the Beet Growers Sugar Company, is possessed of the following-described personal property, which is referred to in and is covered by the said deed of trust aforesaid, viz.:

One steel traveling crane for distributing beets, now located on the premises hereinbefore described;

One miscellaneous lot of laboratory and electrical supplies, bolts, nuts, washers, screws, rivets, cotter keys, packing, storeroom supplies; pipe and pipe fittings; tools; oils and greases; automobile and truck supplies and parts; also located on the premises hereinbefore described; [37]

Four typewriter desks;
Four oak typewriter desks;
Two Underwood typewriters;
One L. C. Smith "
One Royal "
Four oak roll-top desks;
Three oak Cutler desks;
Three oak flat top desks;
Two oak standing desks;
Two small oak tables;
Eight oak swivel chairs;
Six oak arm chairs;
Five straight back chairs;
Six oak arm chairs;
One small swivel stool;
One stationary stool;
Two safes;
Three adding machines;
One check protector;
Two electric fans;
Four section filing cabinets;
One Hotchkiss punch #1;
" " " #2;
One cupboard;
One index file;
One steel cabinet;

One Tagliabue registering thermometer;
One surveying outfit, transit, tripod, rods, chains, etc.;
Eight wire paper baskets;
Five brass cuspidors;
One nickel cuspidor;
One hall tree;
Twelve wire trays;

Also the following tools and implements:

Six Duplex Trucks;
One Quad Truck;
Six Troy tailers;
Three Cultipackers;
Four dump wagons;
One Ford coupe;
42 Small tare scales;
44 beet drills and six sprayers, all located on the premises hereinbefore described;
Four beet wagons now in the possession of E. A. Casper, Frank Goody, K. Olmura, and H. Gross respectively in Jefferson County;
Two beet drills in Bannock County, Idaho;
One Cultipacker in the field in Jefferson County;
One Featherstone loader, located at Sugar City, in Madison County, Idaho;
One Featherstone loader situated at Plano, in Fremont County, Idaho;
One Featherstone loader at Ione, Bonneville County;
One Featherstone loader at Pocatello, Bannock County;
One John Deere loader at Newdale, Fremont County;

One John Deere loader located at Bern, Madison Co. [38]

Also 35 wagon scales located at various points in Jefferson, Madison, Fremont, Bingham and Bannock Countys, in the State of Idaho:

Also the following beet dumps, viz.:

One Highline dump at Ball Ranch, Jefferson County;

One Highline dump at Lewisville, Jefferson County;

One Highline dump at Lufkin, Jefferson County;

One Highline dump at Thornton, Madison County;

One Highline dump at Wilford, Fremont County;

One Highline dump at Winder, Madison County.

That the scales and beet dumps hereinbefore mentioned are situated on land held and owned by the said defendant in fee or upon lands held by it under lease at widely separated though convenient points in the farming districts tributary to said sugar factory for the weighing and storing of beets, and were installed and constructed by the said defendant at large expense; that the remainder of said personal property was also acquired by the said defendant at large expense solely for use in connection with and for the operation of the said sugar factory; that the said plant requires as a part thereof its facilities for handling raw materials from which its finished products, to wit: sugar and molasses are manufactured, including the means for preparing the ground, planting, cultivating and harvesting the crops thereon, and the means of

loading and transporting such raw materials to its factory; its chemicals and personal property for testing and facilities for storing said raw materials and its factory for manufacturing the same, all of said property, both real and personal, constitute essential and component parts of a single working plant, unit or system, in which each part is necessary to give value to the others, a dismemberment of [39] which would greatly impair the usefulness and value of the component parts thereof, and if the said real and personal property is sold separately or otherwise than as a unit the value thereof and subsequently the security for the payment of the bonds herein mentioned will be greatly depreciated, and the plaintiff further alleges on information and belief that if the said real or personal property is sold otherwise than as an entirety and without right of redemption it will be impossible to find bidders for the same at foreclosure sale under decree of this court:

And also amends its bill of complaint herein by changing the first three lines on page eleven of said bill, being a part of paragraph 1st of the prayer of said bill to read as follows: "manner appertaining, and all other real and personal property, whether owned by the said defendant at the time said deed of trust was executed or subsequently included by it and covered by the lien of said indenture, may be sold under decree of this Honorable Court as an entirety and free and clear of any rights whatsoever of redemption in the defendant,

or any person claiming under or through it and that out of the moneys, etc.''

WM. STORY, JR.,
Solicitor for the Plaintiff, Residing at Salt Lake City, Utah.

[Endorsed]: U. S. District Court, District of Idaho. Filed Oct. 9, 1923. W. D. McReynolds, Clerk. [40]

[Title of Court and Cause.]

ANSWER.

Comes now the defendant, Beet Growers Sugar Company, and in answer to complaint of plaintiff heretofore filed in the above-entitled action, admits, denies and alleges:

I.

That as to the allegations contained in paragraph VII of said complaint, this defendant has no information or belief upon the subject matter of the said paragraph that is hereinafter denied sufficient to enable it to answer said paragraph, and placing its denial upon that ground does deny that in consequence of the failure of the defendants to pay the taxes as set forth in said paragraph of said complaint that at the request of the owners of legal holders of more than twenty-five per cent of the bonds secured by the said indenture now outstanding notified the said defendant of its default in respect to the performance of its said covenants and or of its, plaintiff's election to declare

said bonds secured by said indenture, together with accrued interest [41] thereon, due and payable.

II.

That the defendant denies that a reasonable fee for legal services rendered and to be rendered by the attorneys for plaintiff as described and set forth in paragraph VII of said complaint is the sum of Fifteen Thousand ($15,000.00) Dollars, and denies that a reasonable compensation to be allowed to plaintiff for its services as set forth in said complaint is the sum of Ten Thousand ($10,000.00) Dollars.

For further answer this defendant alleges:

I.

That all of the said bond issue is now outstanding; that with the exception of $29,200.00 of said bond issue which has been sold and delivered the said bond issue has been delivered to various creditors of this answering defendant corporation to secure its indebtedness to them and that none of the holders of said bonds have reduced the same by any appropriate legal action to actual ownership and that, therefore, outstanding bonds to the amount of $470,800 of said bond issue are held as security only; that the said bonds were issued to secure indebtedness of approximately $249,502.91 which, with interest at the present time, amounts to $——; that what part of the holders of the said bonds as security have sought for the relief prayed in the complaint of plaintiff is to this answering

defendant unknown; that a substantial number of said secured creditors [42] with approximately $—— of indebtedness secured by the issue to them of bonds have signified to this answering defendant that they have not desired to press foreclosure proceedings under the said bond issue; that said secured creditors in the amount of about $151,797.91 have been holding about $—— par value of bonds for security of their indebtedness and have agreed to accept bonds of the new issue as that issue is described and set forth in paragraph V–A of said complaint in lieu of the bonds now held by them under the said trust deed which is made the subject of said plaintiff's action to foreclose.

II.

That this defendant through its board of directors and officers has been attempting to secure a purchaser for the whole or part of the said $750,000.00 bond issue described in said paragraph V–A and it is part of its plan to retire the said bonds secured under the trust deed to the plaintiff herein and secure release from said plaintiff of the said mortgage running to plaintiff as trustee and by the sale of the said new issue of bonds to re-finance the property of this answering defendant; that to permit a foreclosure and decree in this action would render it impossible for the said bonds secured by the said mortgage described in said paragraph V–A of said complaint to be sold or disposed of, all to the great detriment and irreparable injury to this answering defendant and its stockholders and its unsecured creditors. [43]

III.

That this defendant has a large number of unsecured creditors, approximately $298,724.03 in amount, and if a foreclosure decree is permitted in this action the said unsecured creditors will be unable to secure any payment of the indebtedness owed by this defendant as all of the property of this answering defendant of any substantial value is included in the trust mortgage to the said plaintiff trust company; that the creditors secured by the bonds issued under the trust mortgage are not in equity entitled to better or different consideration than the unsecured creditors; that it would be highly inequitable and unjust to permit any procedure to be carried on and foreclosure had in this action by which the said unsecured creditors would be finally defeated of any opportunity to procure payment of the indebtedness owed to them by this answering defendant; that, therefore, this answering defendant demands that before any decree of foreclosure be entered in this case that the said plaintiff shall be put strictly upon its proof to prove the allegations of said complaint in so far as performance of conditions precedent to the foreclosure of the said trust mortgage has been had by said plaintiff.

This answering defendant further states that it is unnecessary at the present time to appoint a receiver for the property described in the said mortgage to the plaintiff who shall do more than act as custodian of the said property; that there is at this time no [44] necessity for operation of the

said property or the performance of any acts on or in connection therewith excepting only such acts as look to the safekeeping of said property as contradistinguished from active operation or improvement or repair thereof, and if after it has been established that conditions precedent to the institution of this foreclosure proceeding have been had and a receiver is appointed, this defendant prays that due consideration for the unsecured creditors and for the economic conservation and custody of said property that the Court shall appoint as Receiver of this answering defendant's property some citizen of the State of Idaho who shall agree to accept the custody of said property without large fees or charges.

WHEREFORE, This answering defendant prays:

1. That the complaint herein be dismissed and that plaintiff go hence without judgment; that defendant have and recover its costs in this behalf expended.

2. That such decree be had in this case as will properly conserve and protect the interests of this answering defendant and its unsecured creditors.

BEET GROWERS SUGAR COMPANY,
By O. W. GEBBEY,
Vice-president.

HAWLEY & HAWLEY,
Residence: Boise, Idaho,
Solicitors for Defendant.

[Endorsed]: U. S. District Court, District of Idaho. Filed Oct. 25, 1922. W. D. McReynolds, Clerk. [45]

"Order Appointing Receiver in Usual Form." [46—47]

[Title of Court and Cause.]

ANSWER OF BEET GROWERS SUGAR COMPANY TO AMENDMENT TO BILL OF COMPLAINT.

Now comes the Beet Growers Sugar Company and makes the following answer to the amendment to the bill of complaint heretofore filed herein by the plaintiff:

1. Admits that the scales and beet dumps therein mentioned were installed and constructed by defendant at a considerable expense, but denies that they were installed at a large expense when compared with the aggregate cost of the property of this defendant described in the original bill of complaint and in the trust deed therein mentioned; admits that the personal property referred to in said amendment to the bill of complaint was acquired by the defendants solely for use in connection with and for the operation of its sugar factory, but denies that the same was acquired at a large expense when compared with the total cost of the property of [48] this defendant covered by the trust deed described in the bill of complaint; and admits that all of the property mentioned in said amendment at present constitute component parts of a single

working plant and that each part necessarily gives value to the others, but denies that a dismemberment of the system referred to in said amendment will greatly or at all impair the usefulness or value of the component parts thereof; and denies that if the said real and personal property is sold separately or otherwise than as a unit, the value thereof and subsequently the security for the payment of the bonds mentioned in said amendment and the original bill of complaint, will be greatly depreciated; and denies that if said real or personal property is sold otherwise than an entirety or is sold otherwise than without right of redemption, it will be impossible to find bidders for the same at foreclosure sale under decree of this Court, and alleges that any portion of the personal property of this defendant, even though sold separate and apart from the real property of this defendant, could be easily replaced.

Further answering the said amendment, this defendant alleges that at the time the trust deed was made and entered into, to which the plaintiff became a party, and at the time the bonds secured by said trust deed were sold, hypothecated or negotiated, it was expressly understood and agreed by and between all of the parties to said trust deed, including the plaintiff, this defendant, and the bondholders, whether holding said bonds as purchasers or merely as security, that in the event of a foreclosure and sale of the property of this defendant under foreclosure, the same should be sold

subject to the laws of the State of Idaho giving and providing a right of redemption from such sale.

WHEREFORE, this defendant prays that the relief sought by the plaintiffs under its amendment to bill of complaint, to wit, the sale of the property of this defendant without the right of redemption, be denied, and that in case of judgment of foreclosure issued and entered herein and a sale of the property of this defendant [49] be ordered, that such decree and order provide for a right of redemption pursuant to the laws of the State of Idaho in such case made and provided.

H. H. HENDERSON,
MARSHALL, MACMILLAN & CROW,
Attorneys for Defendant, Beet Growers Sugar Company.

[Duly verified.]

[Endorsed]: U. S. District Court, District of Idaho. Filed Oct. 18, 1922. W. D. McReynolds, Clerk. [49½]

[Title of Court and Cause.]

SUPPLEMENTAL BILL OF COMPLAINT.

To Hon. FRANK S. DIETRICH, Judge of the Above-entitled Court:

Your petitioner, the plaintiff herein, respectfully shows:

I.

That on, to wit, the 1st day of July, 1922, it exhibited its original bill of complaint in this court

against the defendants, Beet Growers Sugar Company and Ft. Dearborn Trust and Savings Bank, alleging herein that on, to wit, the 1st day of October, 1919, the said defendant, Beet Growers Sugar Company, by and pursuant to due and proper corporate action in that behalf, issued its negotiable first mortgage bonds bearing the last mentioned date and payable to bearer ten years after date, with interest thereon at the rate of seven per cent per annum, payable semi-annually, in accordance with interest coupons thereto attached and, at or about the time of the issuance of said bonds, secured the payment thereof by executing and delivering to your petitioner as trustee a mortgage or deed of trust, whereby *inter alia* it conveyed to your petitioner, as trustee, the property [50] particularly described in said deed of trust and in the original bill of complaint herein. That thereafter the said Beet Growers Sugar Company executed its second mortgage bonds in the aggregate principal amount of $750,000, and deposited the same with the said Ft. Dearborn Trust and Savings Bank, as trustee, for certification and delivery if and when the first mortgage bonds, secured by the deed of trust in favor of your petitioner as aforesaid, should be cancelled; and that on or about the said last mentioned date, the defendant, Beet Growers Sugar Company, also executed and delivered to the said Ft. Dearborn Trust and Savings Bank, as trustee, a second mortgage or deed of trust upon the property described in the complaint herein as security for the payment of its said second mort-

gage bonds; that the said Beet Growers Sugar Company having made default in the performance of certain covenants in the deed of trust executed by the said Beet Growers Sugar Company in favor of your petitioner as trustee, your petitioner, at the request of the holders of more than twenty-five per cent in principal amount of the bonds secured thereby, had declared all of said first mortgage bonds, together with all accrued interest thereon, to be immediately due and payable, and praying the foreclosure of the said deed of trust in its favor for the purpose of paying the said bonds and accrued interest thereon.

II.

That because of the desire on its part not to interfere with certain negotiations which the said Beet Growers Sugar Company then had pending for the sale of its said second mortgage bonds, by giving publicity to the filing of its said original bill of complaint, your petitioner did not file a notice of *lis pendens* in Jefferson County, Idaho, the county in which the property affected by this suit is situated, and that thereafter on, to wit, the 20th day of October, 1922, the above-named defendant, [51] Idaho Farm Loan Company, which is a corporation organized and existing under the laws of the State of Idaho, and is a citizen and resident of said state, obtained a judgment in the District Court of the State of Idaho, in and for Jefferson County, against the said defendant, Beet Growers Sugar Company, in the sum of $137.65, transcript whereof was filed for record in the office of the County Re-

corder of said Jefferson County on the 25th day of October, 1922;

And on, to wit, the 24th day of October, 1922, the above-named defendant, Thomas George, who is a citizen and resident of the State of Idaho, obtained two certain judgments in the District Court of the State of Idaho, in and for Jefferson County, against the defendant, Beet Growers Sugar Company, in the sums of $224.05 and $1072.45 respectively, transcripts whereof were recorded in the office of the county recorder of said Jefferson County on the 25th day of October, 1922;

And on, to wit, the 26th day of October, 1922, the above-named defendant, The First National Bank of Logan, Utah, which is a corporation organized and existing under the laws of the United States relating to national banks, and has its principal office and place of business in the city of Logan, county of Cache, State of Utah, and for all purposes connected with this suit is regarded in law as a citizen and resident of said last mentioned state, also obtained a judgment in the District Court of the state of Idaho, in and for the county of Jefferson, against the defendant, Beet Growers Sugar Company, in the sum of $1762.74, transcript whereof was filed for record in the office of the County Recorder of said Jefferson County on to wit, the 27th day of October, 1922.

III.

Your petitioner further shows that the filing for record of the transcripts of the judgments hereinbefore mentioned has [52] made the said judg-

ments liens upon the real estates described in the original bill of complaint herein, subsequent and subservient to the deed of trust whereby the said realty was conveyed to your petitioner as trustee, as security for the payment of said first mortgage bonds of the defendant, Beet Growers Sugar Company; and that in order to foreclose the said deed of trust, as against said subsequent incumbrancers, it is necessary that the said defendants, Idaho Farm Loan Company, Thomas George and The First National Bank of Logan, Utah, be joined as parties defendant in this suit and be required to answer the original bill of complaint herein and this supplemental bill of complaint within such time as may be allowed them so to do, but not under oath, an oath being hereby expressly waived.

IN CONSIDERATION WHEREOF, your petitioner prays that the said Idaho Farm Loan Company, Thomas George, and The First National Bank of Logan, Utah, be made parties defendant herein, and that subpoena may issue herein and be served upon the said defendants, Idaho Farm Loan Company and Thomas George; and that inasmuch as the said The First National Bank of Logan, Utah, is not a resident of and cannot be found within the District of Idaho, a warning order may be made and entered in this suit and served upon the said defendant Bank by the United States Marshall for the District of Utah or other qualified person requiring it to appear and defend this supplemental bill within a time to be fixed by this court, upon penalty of having a decree entered

pro confesso against it in accordance with the prayer of the said original bill and this supplemental bill of complaint; and for general relief and its costs in this behalf paid, laid out and expended.

And as in duty bound, your petitioner will ever pray, etc.

WILLIAM STORY, JR.,
Attorney for Complainant.

[Duly verified.]

[Endorsed]: U. S. District Court, District of Idaho. Filed Feb. 21, 1923. W. D. McReynolds, Clerk. [53]

[Title of Court and Cause.]

COMPLAINT IN INTERVENTION.

Comes now E. D. Hashimoto, and by leave of Court first had and obtained, files this his complaint in intervention, and his answer to the bill of complaint herein, and respectfully shows and states to the Court:

1. Your intervenor alleges that he has an interest in the subject matter of this suit and in the lands and premises, the matter in controversy herein; and is and was, at the time of the transactions complained of herein, a preferred stockholder of the Beet Growers Sugar Company, holding in his own right sixteen shares of the preferred stock of said company, and as such preferred stockholder he files this complaint in intervention for and on behalf

of himself and all other preferred stockholders similarly situated.

2. Your intervener alleges that the Beet Growers Sugar Company, defendant herein, is a corporation created and existing [54] under and by virtue of the laws of the State of Idaho, and that it is a citizen and resident of said state, having its principal place of business in the city of Rigby, in the County of Jefferson, State of Idaho.

3. Your intervener alleges that in and by the articles of incorporation of said company the limit of the capital stock thereof is $3,000,000.00, divided into two classes, to wit, preferred stock and common stock; of which there were and are 200,000 shares of preferred stock of the par value of $10.00 per share, and 400,000 shares of common stock of the par value of $2.50 per share.

That by said articles of incorporation it was and is expressly provided that the preferred stockholders should be entitled to receive, from the surplus or net proceeds of the corporation, a yearly cumulative dividend of seven per cent, payable before any dividend should be paid on the common stock; and that on dissolution or liquidation of the corporation the holders of preferred stock should be entitled to receive the full par value of their stock and all unpaid dividends accrued thereon, before any payment was made on the common stock, and that only the property remaining should be distributed among the holders of the common stock. That by said articles it was and is expressly provided that the preferred stock should not be entitled to vote at any stockholders' meeting of the company.

4. That there is issued and outstanding of the preferred stock of said company a total of 120,000 shares, and that the same represents an investment in cash made by the preferred stockholders of $1,200,000.00. That the total value of the assets of said company, as your intervener is advised and verily believes, does not exceed the sum of $1,200,000.00, and that the debts of said company are approximately $600,000.00. That there is no equity or value in said property, after the payment of [55] debts, for division among the common stockholders—any equity remaining after the debts are paid being less than sufficient to pay and satisfy the preference of the preferred stockholders.

5. That on the 1st day of July, 1922, the complainant in this action exhibited and filed in this court its bill of complaint herein, and that thereafter such proceedings were had herein that, upon the application of the complainant in said action, a receiver was appointed of all the property covered by the trust deed herein sought to be foreclosed, and the plant and property of said company has been taken into the possession of, and is now held by, the said receiver.

6. That in view of the situation and the conflicting rights of the different groups or classes of stockholders, certain of the preferred stockholders (including your intervener) owning preferred stock in said company entered into a preferred stockholders' association under the name of the "Association of Preferred Stockholders of the Beet Growers Sugar Company," with subcommittees at Salt Lake, Logan

and Ogden, Utah, and Idaho Falls, Montpelier and Rigby, Idaho, with an executive committee consisting of Fred Gustafson, Chairman, Idaho Falls, Idaho; R. H. Morgan, secretary, Willard, Utah; E. D. Hashimoto, treasurer, Salt Lake City, Utah; A. Van Cott, Salt Lake City; Geo. E. Hill, Rigby, Idaho; E. A. Austin, Montpelier, Idaho; T. S. Karren, Lewiston, Utah, and A. W. Lewis, Rigby, Idaho. That the said executive committee was constituted, by the agreement of the said preferred stockholders, a committee in the interest of the preferred stockholders who might deposit their stock as thereafter designated, with full power to delegate their authority to officers selected, and to direct legal proceedings, and to appoint one or more of their officers to appear or intervene in any legal proceedings in the interest of said preferred stockholders. That the said executive committee has authorized its [56] officers, R. H. Morgan and A. Van Cott, to cause your intervener, through its solicitors, to file this complaint in intervention; and your intervener is duly authorized to represent, as intervener, such of the preferred shareholders who may deposit their stock under the agreement of said association.

7. That neither this complaint in intervention nor the suit in which the same is filed is collusive to confer upon the United States Court jurisdiction of a cause of which it is not otherwise cognizant. That since the plant and property referred to in the complaint herein (being the principal assets of said concern) have been taken in the hands of a

Receiver, the Board of Directors has ceased to function; and this intervener is advised that it has no power or authority to determine the rights and priority of the preferred stockholders, or to reconcile or determine the rights of the conflicting groups of stockholders. That your intervener has applied to the receiver herein, but the receiver takes the position that it is not his duty to attempt to determine the conflicting rights of the respective groups of stockholders, and refuses to act in the premises, and this intervener is without remedy save by direct suit or by intervention herein.

8. Your intervenor further shows to the Court that by reason of the conflicting interests, and the right of the preferred stockholders herein to be entitled to any equity in the corporate property remaining after payment of the debts of said concern (a Receiver having been appointed), it is necessary for the said preferred stockholders to intervene herein—to the end that their interests in said property may be made preferred and their rights herein fully protected.

9. Your intervenor avers and respectfully suggests that, since the preferred stockholders have a priority over common [57] shareholders, not only in the payment of dividends, but also in the distribution of the assets remaining, the said preferred stockholders have the right and should be permitted and allowed, by decree, to deposit in partial payment of any bid which they may make at any sale ordered their shares of preferred stock, provided that they pay into the registry of this court a sum upon their

bid in cash sufficient to satisfy all the costs and expenses of this suit and sale, all Receiver's debts, all the mortgage debts (if any there be), and all debts and claims which have been filed, either in the foreclosure proceeding or in any general receivership.

10. Your intervenor is advised and verily believes that a reorganization through said preferred stockholders can be had, by which the obligations of said concern will be paid off and all matters fully adjusted. That such reorganization can only be effected through the Association of Preferred Stockholders, herein set forth, and by and through the recognition of their rights herein.

11. Your intervenor further alleges that by reason of the taking over of the property of said corporation, and the resulting paralysis in corporate action, there is no person authorized to attend to its corporate affairs, or to operate its plant, or to negotiate a sale of the property, or to borrow funds, or to contract for the corporation. That the good will of said plant is of great value, and the same will be dissipated and wholly lost unless contracts are made for the season of 1923 with beet growers in the adjacent territory.

12. That the unsecured claims against said corporation aggregate a large sum, to wit, approximately $220,000.00. That the said creditors threaten suits against the corporation and attachment, and unless the receivership herein is extended and all of the corporate affairs taken into the hands of a general [58] Receiver there will result a multiplicity of suits and the property of the corporation will be

wasted and dissipated, to the great and irreparable damage of your intervenor and other preferred stockholders similarly situated.

13. That many of the common creditors hold bonds, part of the series herein sought to be foreclosed, and the said creditors holding said bonds are proceeding—notwithstanding the foreclosure suit now pending in this court—to sell the bonds so held, and to acquire absolute title thereto, although the indebtedness for which the said bonds are held as collateral security is but a very small amount of the face of the bonds. That in some instances bonds to the extent of $40,000.00 are held by creditors for obligations of the corporation not exceeding $20,000.00; and in many instances the amount of bonds so held (being part of the bonds under the trust deed herein being foreclosed) are twice or three times the amount of the real indebtedness due from the corporation and secured by said bonds.

14. Your intervenor is advised and believes that the bondholders, the trustee, and all parties are anxious to have contracts made with the beet growers in adjacent territory so that the good will of the corporation can be preserved, and are willing and desirous, in the event that the Court shall so order, to have the expense thus incurred part of the expense of the administration of said estate, underlying the mortgage debt.

15. That the books and corporate records are being scattered, and unless at once preserved it will be impossible to make a complete accounting. That claims and chose in action to a large amount due

to the corporation will be lost and the evidence thereof mislaid and destroyed.

Answering the bill of complaint herein of the Columbia [59] Trust Company, this intervenor admits, denies and alleges, as follows:

1. This intervenor admits paragraphs I, II, III and IV of said complaint.

2. Answering paragraph V of said complaint, this intervenor admits that $500,000.00 of said bonds were duly authenticated by indorsement thereon of the certificate of the complainant, as Trustee, and admits that the same were delivered by the complainant to the defendant; and admits that a small portion, to wit, approximately $50,000.00 of said bonds were delivered to and are held by purchasers for value. As to the remainder of said bonds a portion thereof have wrongfully been taken by officers of the company who hold the same to protect and secure their alleged personal claims against the defendant, Beet Growers Sugar Company, which alleged claims represent but a small proportion of the face value of the said bonds so taken; and in taking the same the said officers wrongfully and improperly, and to the prejudice of the creditors of said company, preferred themselves as creditors, and have assumed to act in the taking as officers, when in fact incompetent so to act because of their personal interest. The balance of said bonds are pledged for sundry claims against the company, which claims are much smaller than the amount of bonds pledged; and the real mortgage indebtedness represented by the bonds, and for which said bonds

are pledged, is much smaller than the face of the bonds so held. This intervenor further alleges that the actual indebtedness of the corporation for which bonds are issued and held does not exceed the sum of $200,000.00.

3. This intervenor admits paragraphs V–a and VI of said complaint.

4. As to paragraph VII of said bill of complaint, this [60] intervenor admits that taxes and penalties have accrued against the mortgaged property in approximately the sum of $42,900.00, which are a lien upon the property, prior and superior to the deed of trust of the complainant. Admits that defendant company has failed to deposit with the plaintiff as Trustee policies of insurance, if it has any, upon the buildings and other improvements. As to whether twenty-five per cent of the bonds secured by said indenture and now outstanding have requested the plaintiff to notify the defendant company of its default in the aforesaid particulars in respect to the covenants in said mortgage, and as to the manner, if at all, the plaintiff has elected or pretends to elect to declare any part of the bonds due and payable, this intervenor has no knowledge nor any information sufficient to form a belief, and placing his denial upon that ground denies each and every allegation with respect thereto. This intervenor admits that the complainant is not advised as to the total amount of bonds outstanding, and alleges that the total mortgage indebtedness held as aforesaid and for which said property should be sold, and the amount due under said bond issue as

such mortgage indebtedness, does not exceed the sum of $200,000.00.

5. This intervenor admits all of the allegations contained in paragraph VIII of said bill of complaint, except as to the amount alleged as reasonable attorney's fees, and the amount alleged as trustee's fees; and as to such allegations this intervenor alleges that he has no knowledge nor any information sufficient to form a belief as to the amount of services rendered by the attorneys or by the trustee, or as to the amount which would compensate the said attorneys or the said trustee for their services in this behalf, and leaves said complainant to make such proof in the premises as it can make. And this intervenor further alleges that he has no knowledge nor any [61] information sufficient to form a belief as to whether the proper request has been made by the proper number of bondholders, or proper action has been taken in the premises, to entitle said Trustee to commence this action, and having no knowledge nor any information sufficient to form a belief with respect thereto, this intervenor leaves the complainant to make such proof in the premises as it can make.

WHEREFORE, this intervenor prays judgment upon his complaint in intervention and answer herein:

1. That in the event the plaintiff is entitled to foreclose its trust deed herein, and is entitled to the relief sought with respect thereto in this action, that the amount of the mortgage indebtedness be ascertained and adjudged by the Court; and that if neces-

sary, in the premises, the matter be referred to a master to take evidence as to the amount actually due from the corporation to the several bondholders holding bonds, and for which said bonds were issued, and that only the amount due from the said corporation to the several bondholders for which said bonds were given, together with interest, collector's fees, trustee's fees and costs, be adjudged and determined to be the mortgage indebtedness; and that the said bondholders be required to deposit their bonds with the registry of this court, and to make proof of the actual amount due from the corporation to the said bondholders for which said bonds are held, and that they be restrained and enjoined from taking any proceedings to magnify and increase the mortgage indebtedness by foreclosing the pledges of said bonds, and from claiming that there is due thereon any sum, save the actual corporate indebtedness for which said bonds are pledged.

2. That in the meantime and pending final decree herein, the receivership herein be extended, and the said Receiver clothed with the powers of a general and operating Receiver; and [62] that all creditors be required to present their claims, the same to be adjudged and determined in this action—to the end that the rights of all and every person interested in the property of said corporation be now and herein determined.

3. That the rights of this intervenor and all other preferred stockholders be determined, and that by the decree herein it be adjudged and determined

that the said preferred stockholders have a priority over the common stockholders and a first right, after the payment of all debts, claims and costs, to the assets remaining, for the purpose of paying all accrued dividends, and also to return to the said preferred stockholders the par value of their said stock.

4. That it be further by the decree of this Court adjudged and determined that this intervenor, and the other preferred stockholders have the right, and are permitted by the decree herein, to deposit in partial payment of any bid which they may make on any sale ordered their shares of preferred stock at their distributive value, provided that they pay into the registry of this court a sum upon their bid in cash sufficient to satisfy all the costs and expenses of this suit and sale, all Receiver's debts, the mortgage debt, and all debts and claims which have been filed herein.

5. And for such other and further relief as to the Court may seem just.

E. D. HASHIMOTO,
Intervenor.
DEY, HOPPAUGH & MARK,
Solicitors for Intervenor.

[Duly verified] [63]

"Order permitting Complaint in Intervention to be filed, granted." [64]

[Endorsed]: U. S. District Court, District of Idaho. Filed Dec. 7, 1922. W. D. McReynolds, Clerk.

"Petition of Receiver asking authority to lease property, filed." [65–70]

[Title of Court and Cause.]

ORDER TO TAKE COMPLAINT IN INTERVENTION PRO CONFESSO.

It appearing from the records and files herein that on the 22 day of November, 1922, an order was duly made and entered herein by the Court, authorizing E. D. Hahsimoto to file a complaint in intervention herein, and that thereafter, to wit, on the 7th day of December, 1922, the complaint in intervention of E. D. Hashimoto was filed herein, and it further appearing herein that a copy of said complaint in intervention was on the 6th day of December, 1922, served by mail upon Messrs. Hawley & Hawley, attorneys for defendant Beet Growers Sugar Company, at Boise, Idaho, and it further appearing that a copy of said complaint in intervention was served upon the solicitors for plaintiff Columbia Trust Company, on the 6th day of December, 1922, and on the solicitor for A. V. Scott, Receiver of Beet Growers Sugar Company on the 7th day of December, 1922, and that no motion, demurrer, plea or answer has been filed to said complaint in intervention, or appearance made in opposition thereto by any of the parties hereto, although such appearance [71] or pleading should have been filed on or before the 26th day of December, 1923, 15th day of January, 1923, and 27th day of December, 1922, respectively.

NOW, THEREFORE, on motion of A. L. Hoppaugh of Dey, Hoppaugh & Mark, solicitors for

said E. D. Hashimoto, complainant in intervention, it is ORDERED AND DECREED, that said complaint in intervention herein be taken *pro confesso* as to said defendants, Beet Growers Sugar Company and A. V. Scott, Receiver of the Beet Growers Sugar Company, and as to Columbia Trust Company, plaintiff herein.

Dated at Boise, Idaho, February 26, 1923.

[Seal] W. D. McREYNOLDS,
Clerk.

[Endorsed]: U. S. District Court, District of Idaho. Filed Feb. 27, 1923. W. D. McReynolds, Clerk. Pearl E. Zanger, Deputy. [72]

[Title of Court and Cause.]

PETITION OF INTERVENOR TO SELL ALL OF PROPERTY OF DEFENDANT COMPANY WITHOUT REDEMPTION.

The petition of E. D. Hashimoto, filed by leave of the Court first had and obtained, respectfully states and shows to the Court:

1.

That A. V. Scott was originally appointed Receiver herein upon the bill of complaint in this case filed by the Columbia Trust Company, for the purpose of foreclosing a trust deed, a copy of which is exhibited as a part of the bill of complaint, which trust deed included real and personal property, all comprising parts of a single working plant or utility, to wit: a sugar factory, in which each part is neces-

sary to give value to [73] the others, including the good will, and both the real and personal property, and where a dismemberment of the system would destroy or greatly impair the usefulness or value of its component parts:

2.

That in the order of this Court appointing said Receiver, the said A. V. Scott, as such Receiver, was ordered and directed to take possession of all the property and assets of the Beet Growers Sugar Company, real, personal and mixed, of whatsoever kind and nature, and wheresoever situated, covered by the said trust mortgage, and of the earnings, tolls, income, revenue, issues and profits thereof, and was authorized, empowered and instructed to take possession of, collect, control, preserve and protect the said property, including the books of account and other records relating to said defendant corporation.

3.

That the said Receiver duly qualified and has ever since acted as such Receiver.

4.

That thereafter your petitioner, by leave of this Court, and with the consent of all parties, filed his petition in intervention herein as a preferred stockholder of the Beet Growers Sugar Company, for and on behalf of himself, and all other preferred stockholders similarly situated, wherein he prayed *inter alia* in substance that the said Receiver be extended, and that all creditors be required to present their claims, the same to be adjudged and determined in said action, "to the end that the rights

of all and every person interested in the property of said corporation be entered and herein determined"; also that the preferred stockholders, after the payment of all debts and claims have the first right to the assets remaining and also that the preferred stockholders have the right and be permitted by the decree herein to deposit in partial [74] payment of any bid which they might make on any sale ordered their shares of preferred stock at their distributive value, and said complaint in intervention further prayed for general relief.

5.

That thereafter, and by consent of all the parties the Court herein made an order upon said petition in intervention, which order recited among other things that the said plaintiff was a preferred stockholder, and that he, and the other preferred stockholders, had a first and prior equity in all of the property of the corporation, after the payment of the corporate debts; that the corporation was not functioning and its corporate powers were not being exercised, and also that there was grave and imminent danger of the dissipation and loss of the corporate assets, unless the property was protected as a going concern; that the said order required all creditors to present and make proof of their claims under penalty of the same being disallowed, in the discretion of the Court; that the said order further directed that this Receiver in his discretion should enter into contracts with beet growers.

6.

That no plea or answer was filed to the complaint

of your petitioner, and thereafter this Court by its order duly given and made many months ago directed that a decree *pro confesso* be entered upon said complaint in intervention.

7.

Your petitioner further represents to the Court that as will appear upon an inspection of the said complaint in intervention that the purpose and effect thereof was to wind up the affairs of the corporation by sale of its property, and for an equitable distribution of its assets, first to its creditors secured and unsecured, and, second to its preferred stockholders. [75]

8.

Your petitioner further suggests to the Court that by the statutes of the State of Idaho on a dissolution of a corporation, voluntary or otherwise, the holders of preferred stock shall be entitled to have their shares redeemed at par before any distribution of any part of the assets of the corporation shall be made to the holders of common stock, and the provision of the statute is in substance and effect engrafted into the Articles of Incorporation of said company, which provides for the distribution of the assets among the holders of preferred stock before any of said assets shall be applicable to the holders of the common stock, and as appears from the complaint in intervention confessed herein there is no value remaining in the assets of said corporation over and above its debts, secured and unsecured, and the equity to which the said preferred stockholders are entitled.

9.

Your petitioner further shows that the said assets of the said Beet Growers Sugar Company consists of a sugar factory, situated at Rigby, in the State of Idaho; its beet dumps, trucks, personal property, the dumps being placed upon leased grounds at sites accessible to railroad facilities and to carry the sugar beets grown to the factory from the points where unloaded from the nearby farms; that the dumps so upon leased grounds are of great value, because of their location, and the personal property is of great value in connection with the factory operated as a going concern; that the whole comprises a single unit, all of which is essential to the factory as a whole and that the real and personal property all comprises parts of a single working plant or utility, in which each part is necessary to give value to the other, and that a dismemberment of the system would greatly destroy and greatly impair the usefulness and value of its component parts. [76]

10.

Your petitioner is advised and verily believes that should the property be dismembered or segregated and the real property be sold subject to redemption no purchaser could be found who would be willing to pay the taxes accrued upon the property, the administration expenses, and in addition any substantial sum upon the bonded indebtedness; but, on the other hand, your petitioner is advised and verily believes that should your Honor sell the whole of said plant as a single unit, including both

the real and personal property, without redemption, that a sufficient sum will be paid upon the property to not only pay the mortgage indebtedness, and administration expenses, but to leave a substantial sum in the hands of the Receiver to apply upon the claims of general creditors.

11.

Your petitioner further shows that the taxes accrued for the years 1920, 1921, 1922 and 1923, upon said property, aggregate approximately the sum of $74,00000; that your Receiver has no money with which to meet said payments and that a tax deed for the property, under the laws of the State of Idaho, will accrue on the first Monday of January, 1924, for the taxes for the year 1920.

12.

Your petitioner further shows that it is essential in order to maintain the value of said property that it be kept intact as a unit and as a going concern; that the value of said sugar factory and plant is largely dependent upon the good will and co-operation of the beet growers in the vicinity of said factory; that without having the good will, co-operation and continued loyalty of the beet growers the value of said factory and plant will be greatly depreciated and impaired to a great extent; that the loss for one season of the good will and co-operation of said [77] beet growers means a loss to said factory and beet growers in that vicinity; that should the said factory not be operated the coming season it will probably take several years before the confidence and co-operation of the beet growers

in the vicinity could be restored so that beets could be grown and furnished for the operation of the said factory hereafter; that thereby the value of said factory would become greatly impaired and would, unless the co-operation of said beet growers could hereafter be secured, become of junk value only; that in order to secure the operation of said factory for the following season it will become necessary to contract for beet seed, and begin to contract with the farmers and beet growers in January for the production of beets for the operation of said factory in the fall of 1924; that unless a sale is made without redemption such uncertainty will follow that the prospective purchasers will be deterred from bidding, not knowing after the purchase is made whether they will ultimately own the property or the condition of the property at the end of the redemption period, and also whether beet acreage will or can be secured for the operation of the factory after the termination of the period of redemption should the same not be redeemed.

13.

Your petitioner further says that the territory covered and to which the beet dumps of the Beet Growers Sugar Company extends is approximately sixty-five miles south of the factory; twenty-five miles north, and seven to eight miles east and west; that in the operation of said factory approximately one thousand farmers raise beets and have contracted from time to time with the Beet Growers Sugar Company for the sale of their beets and are largely dependent in the operation of their farms

upon the sale of such beets so raised; that during the sugar season as high as five hundred are employed at the factory; that the [78] town of Rigby, its prosperity or prostration is to a large extent dependent upon the said sugar factory; that if said factory were sold subject to redemption, in the opinion of your petitioner, a bid could not be obtained, or if one were successfully secured, no such bid could be obtained in excess of the mortgaged indebtedness; that if the property were sold without redemption as a single unit, your petitioner is informed and believes that a price would be bid upon said property in excess of the amount of the present bonded indebtedness, and administration expenses, and sufficient over and above the bonded indebtedness and administration expenses to pay a substantial sum to the common creditors.

14.

Your petitioner further suggests to the Court that unless a sale speedily occurs great and irreparable damage will follow for the reasons already stated; that under the pleadings in this case the property should be sold, its affairs wound up, and the moneys realized distributed among the persons entitled thereto.

15.

Your petitioner further shows that pursuant to the statutes of the State of Idaho on December 1st, 1922, the said Beet Growers Sugar Company forfeited its charter and ceased to have a corporate existence, and at that time the rights of your intervenor as a preferred stockholder, and all other

preferred stockholders similiarly situated accrued and thereby and thereupon became entitled to demand that the property of said concern be sold and its affairs wound up and its assets after the payment of its debts secured and unsecured applied to the payment of the par value of the stock of said preferred stockholders. [79]

WHEREFORE, your petitioner prays that because of the mergency as herein set forth that all of the assets, real and personal of said concern as a single unit, be sold without redemption; that out of the proceeds thereof this Court pay:

First. The costs and expenses of administration, including Receiver's and counsel fees, and any Receiver's certificates outstanding;

Second. All governmental charges;

Third. The amount of the mortgaged indebtedness when the same is fixed by the Court;

Fourth. If any surplus remains that the same be divided among the common creditors until the said common creditors are paid in full, and if there be any over-plus remaining after paying all the above stated sums that the said remainder be paid to the preferred stockholders to the extent of the par value of their stock, and if there still remains any sum after paying and satisfying all of the above items that such remainder be distributed among the common stockholders.

E. D. HASHIMOTO,
Petitioner.

DEY, HOPPAUGH & MARK,
Solicitors.

[Duly verified.]

[Endorsed]: U. S. District Court, District of Idaho. Filed Oct. 9, 1923. W. D. McReynolds, Clerk. [79½]

[Title of Court and Cause.]

ANSWER TO PETITION OF E. D. HASHIMOTO, INTERVENER.

Now comes the Beet Growers Sugar Company and answers the petition of E. D. Hashimoto, intervener herein, praying for a sale of the premises of this defendant, without redemption, as follows, to wit:

1. Answering paragraph 1 thereof, this defendant admits that the said A. V. Scott was originally appointed Receiver herein after the bill of complaint in foreclosure had been filed by the Columbia Trust Company; denies that the property of the defendant described in the trust deed under foreclosure is in any sense a public or *quasi*-public utility or anything more than a private enterprise, and denies that a dismemberment of the alleged system referred to in said paragraph 1 would destroy or greatly impair the usefulness or value of its component parts; and for further answer to said paragraph 1 this defendant refers to its additional answer hereinafter set out. [80]

2. Answering paragraphs 4, 5 and 6, of said petition, this defendant admits the filing of the complaint in intervention as therein mentioned and admits that no plea or answer was filed to said complaint, and that a decree *pro confesso* has been entered upon said complaint in intervention; but

in that regard this defendant alleges that said proceedings took place prior to the time when the present officers of the defendant corporation were elected and qualified and that since the election and qualification of the present officers of the defendant corporation, through such officers, the defendant has been endeavoring and is still making endeavors to procure the necessary funds with which to discharge its mortgage indebtedness and settle with its common creditors, as hereinafter in its additional answer more fully set forth; and further alleges that if the intervener and his associates are permitted to deposit in payment or partial payment of any bid which they might make on the sale of the property of this defendant, their shares of preferred stock at their distributive value, it will result in increasing largely the amount necessary to be paid for redemption of said property of this defendant from sale under foreclosure and will be inequitable to the common stockholders and to this defendant and its preferred stockholders who have not joined with said intervener; that the holders and owners of substantially seventy per cent of the par value of the preferred capital stock of this corporation issued and outstanding (and not including its preferred stock issued and outstanding as security for indebtedness) are opposed to the plan of the said intervener and his associates, and that if the said intervener and his associates are permitted to deposit their preferred stock in payment or partial payment of any bid which they might make on a sale of said property, and the

petition filed by said intervener for the sale of said property without redemption be granted, it will result in a complete and final liquidation of the defendant corporation in violation of the contract made and entered into between the stockholders [81] of this defendant corporation when they subscribed to its articles of incorporation and to its capital stock, and contrary to the will and wishes of a majority of the stockholders of this defendant corporation. Further answering said paragraph 6 this defendant admits that for a time it was not functioning and its corporate powers were not being exercised, but alleges that upon the election and qualification of its present officers it began to function as a corporate entity and its corporate powers have ever since said time been and are now being exercised for the benefit of its stockholders and creditors.

3. Answering paragraph 7 of said petition, this defendant admits that the complaint in intervention of the said intervener was filed with the intention and for the purpose of winding up the affairs of this defendant by a sale of its property, but alleges that the intervener is endeavoring by means of said complaint in intervention and his petition for the sale of the property of the defendant without redemption, to wind up the affairs of this defendant corporation, contrary to the express contract made and entered into between the stockholders under and by virtue of its articles of incorporation and contrary to and against the wishes of a great majority of the holders of the capital

stock of this corporation; and further alleges that although the said intervener and his associates have from time to time in writing and otherwise endeavored to secure consent of the stockholders of this corporation to the plan of said intervener and his associates, they have secured the consent of not more than the holders and owners of thirty-one (31) per cent in amount of the issued and outstanding preferred capital stock of this corporation, not including its capital stock issued to secure certain debts of this corporation; and this defendant further alleges that a great majority of the holders of the capital stock of this corporation are opposed to such attempted violation of the contract between the stockholders, as evidenced by its articles of incorporation, and to a sale of its [82] property without redemption and to the winding up of its affairs, as prayed for by said intervener.

4. Answering paragraph 8 of said petition, this defendant admits that the statutes of the State of Idaho therein referred to are in substance and effect grafted into the articles of incorporation of this company, but denies the right of a minority of the stockholders under the laws of Idaho to bring about and force, against the will and consent and wishes of a majority of the stockholders of this defendant, a liquidation and winding up of its affairs; and denies that there is no value remaining in the assets of this corporation over and above its debts secured and unsecured and the equity to which the preferred stockholders of this corporation are entitled.

5. Answering paragraph 9 of said petition, this defendant alleges that the dumps and scales of this defendant referred to in said paragraph have been appraised at the value of $42,000.00; and in this regard defendant alleges that the property of this defendant since the commencement of the foreclosure proceedings in this court has been appraised conservatively at the aggregate value of $1,358,200.00; admits that the personal property of this defendant is of great value in connection with the factory operated as a going concern, but allege that there is always a demand for personal property of the character of the personal property owned by this defendant; admits that the said enterprise comprises at the present time a single unit and that each part necessarily gives value to the other, but denies that a dismemberment of the system would greatly destroy or greatly impair the usefulness or value of its component parts, and allege that any portion of the personal property of this defendant even though sold separate and apart from the real property of this defendant, could be easily replaced.

6. Answering paragraph 10, this defendant denies that if the said property should be dismembered or segregated and the real property sold subject to redemption, no purchaser could be found [83] who would be willing to pay the taxes accrued upon the property, the administration expenses, and in addition a substantial sum upon the bonded indebtedness.

7. Answering paragraph 11 this defendant denies that the aggregate amount of the taxes accrued

against said property is of the sum of $74,000.00 or of any sum in excess of $67,000.00; and denies that a tax deed for said property under the laws of the State of Idaho will accrue on the first Monday of January, 1924, for the taxes for the year 1920; and in this regard further alleges that this defendant is now endeavoring to procure the necessary moneys to meet and pay all of said taxes, together with any penalties thereon.

8. Answering paragraph 12, this defendant denies that it is essential in order to maintain the value of said property, that it be kept intact as a unit or as a going concern; admits that the said sugar factory and plant is to a certain extent dependent upon the good will and co-operation of the beet growers in the vicinity of said factory; admits that without having the good will, co-operation and continued loyalty of the beet growers the value of said factory and plant will be to a certain extent depreciated, but to what extent the said value will be depreciated and impaired this defendant is at this time unable to express an opinion; denies that the loss for one season of the good will or co-operation of said beet growers necessarily means a loss to said factory or to the beet growers in that vicinity; denies that should the said factory not be operated the coming season it will probably take several years before the confidence or co-operation of the beet growers in the vicinity could be restored, so that beets could be grown or furnished for the operation of the said factory hereafter or thereafter; denies that thereby the value of said factory

would become greatly impaired; denies that unless a sale is made without redemption such uncertainty will follow that prospective purchasers will be deterred from bidding or that a sale of the factory without redemption would [84] result in any dubiety as to the ability or probability of the owner of said factory securing beets for the operation thereof after the termination of the period of redemption, should the same not be redeemed; and for further answer to the allegations of the said paragraph this defendant refers to its additional answer hereinafter set out.

9. Answering paragraph 13 this defendant denies that the farmers therein referred to are largely dependent in the operation of their farms upon beets raised for this defendant company's factory, but in this regard alleges that for many years prior to the erection of this defendant company's factory, said farmers did contract with and raise beets for other sugar companies, and that ever since the erection of this defendant company's factory said farmers have contracted with and raised sugar beets for sugar companies other than this defendant company, and that at *time* a portion of said farmers have raised beets for this defendant company and other sugar companies during the same season and are doing so during the present season; and for further answer to the allegations of said paragraph, this defendant refers to its additional answer hereinafter set out.

10. Answering paragraph 14, this defendant denies that unless a sale speedily occurs great or

irreparable damage will follow for the reasons stated in said petition or for any other reasons, and denies that under the pleadings in this case the property of this defendant should be sold without redemption or its affairs wound up.

11. Answering paragraph 15, this defendant admits that under the laws of Idaho on December 1, 1922, its charter was forfeited for failure to pay taxes, but alleges that its said charter was forfeited after the receiver of its property was appointed by this Court; that it was the duty of said receiver to pay said taxes and reinstate this defendant company but that the said receiver neglected so to do, and this defendant thereafter paid the said taxes under the [85] laws of the State of Idaho, its rights as a corporation were reinstated, ever since which said time it has been and is now in good standing as a corporation in the State of Idaho.

ADDITIONAL ANSWER.

This defendant makes the following further and additional answer to the said petition of intervener, to wit:

(A) This defendant admits that the value of the sugar factory and plant of the Beet Growers Sugar Company is to a certain extent dependent upon the good will and co-operation of the beet growers in the vicinity of said factory, and in that regard alleges that a large number of stockholders of this defendant corporation are farmers residing within the vicinity of said factory who have from time to time grown beets under contracts for this defendant corporation and that their interest consists not only

of an interest as a beet grower but also as a stockholder; that said persons became stockholders of said corporation for the purpose of organizing and having an interest in an independent sugar factory in order that they might be interested in said factory as growers of beets and as stockholders; that the majority of such persons are opposed to the sale of the property of this defendant corporation without redemption, but as stockholders of this defendant corporation desire in the event of the sale of said factory under foreclosure of the trust deed described in the pleadings on file herein, that they be given the benefit of the laws of the State of Idaho providing for redemption under foreclosure proceedings in order that they, together with other stockholders of said corporation, may have an opportunity with this defendant corporation of arranging and providing for the redemption of the property of this defendant corporation from any sale that might be made under foreclosure proceedings.

(B) This defendant further alleges that of its stockholders [86] there are 1,000 residing in and who are residents of the State of Idaho and who hold capital stock of said corporation of the par value of $455,590.00, and in addition thereto $600,000.00, par value of the preferred capital stock of said corporation which has been issued and is now being held as collateral security for the indebtedness of this defendant corporation; that the sale of said property of this corporation without redemption would result in a loss to the said persons

holding and owning said capital stock of this defendant corporation of almost, if not all, of their holdings in this defendant corporation, for the reason that the full value of the property of this defendant corporation could not be realized at any public sale of said property, whether with or without redemption, and that if the said property should be sold without redemption the said stockholders would have no opportunity whatsoever of protecting themselves against the loss of their holdings in the capital stock of this corporation and would not be protected except to the extent of any sum which might be realized over and above the amount of the secured indebtedness of this defendant; that in addition to such stockholders there are a large number of unsecured creditors of this corporation holding an indebtedness against this corporation of the aggregate value of $214,624.00; that in the opinion if this defendant a sale of the property of this corporation without redemption would not realize sufficient over and above the secured indebtedness of this corporation to meet the indebtedness held by such unsecured creditors; that for the reasons set forth in this paragraph, this defendant alleges a sale of its property without redemption would be detrimental and inequitable to said stockholders and said creditors.

(C) This defendant further alleges that it has 2,173 stockholders, of which number 72% are farmers; that the total amount of its preferred capital stock issued and outstanding which has been paid for in cash is $1,160,050.00, and in addition thereto

$600,000.00 par value of its preferred capital stock issued and [87] held as collateral security for an indebtedness of $300,000.00; that of the said $1,160,050.00, par value of preferred capital stock so as aforesaid issued and outstanding and paid for in cash, the alleged association of preferred stockholders, represented by the intervener, E. D. Hashimoto, holds $360,000.00 par value, or approximately 31% of the total amount of the preferred capital stock of this corporation issued and outstanding and paid for in cash; that there are 649 creditors of this defendant corporation holding claims aggregating $214,624.85, which claims are unsecured; that this defendant, through its officers, has been engaged in promoting a plan for the refinancing of this defendant corporation in order to enable it to liquidate the secured and unsecured indebtedness, for which purpose a large number of the preferred stockholders have been interviewed, including a number of the preferred stockholders who have become members of the alleged association of preferred stockholders, and from such interviews this defendant has ascertained and alleges that a majority of the holders of the preferred capital stock of this defendant are opposed to the sale of its property without redemption, and have signified their willingness to co-operate in a reorganization, which will result in the liquidation of its indebtedness, including the claims of secured and unsecured creditors, and in a saving of the investment of the stockholders of this defendant; this defendant further alleges that in the event a

sale of its property upon foreclosure shall be ordered by this court, subject to redemption, it will be able to consummate its plans and redeem the property from such sale within the period of redemption provided for under the laws of the State of Idaho, but that in case sale shall be ordered without redemption it will result in a great, if not total, loss to its preferred and common stockholders and its unsecured creditors.

(D) Defendant further alleges that it has been hampered in its plan of reorganization up to the present time by reason of the fact that most of the outstanding bonds of this defendant have been held [88] as security and it has therefore been unable to state and is now unable to state the exact amount of such secured indebtedness and will be unable to do so until this Court has ascertained and determined under the proceedings heretofore had and now pending, the exact amount of such secured indebtedness.

(E) This defendant further alleges that the said intervenor and his associates in a written explanation of the plan of its reorganization dated November 24, 1922, and addressed to the preferred stockholders of the Beet Growers Sugar Company, after referring to the indebtedness of said corporation and to the fact that the preferred stockholders had invested in said corporation $1,160,000.00, referring to the property of this defendant, stated:

> "There is even now at junk values, a substantial equity in the property, above all debts secured and unsecured"

and further stated in said writing, referring to the value of this defendant's sugar factory, as follows:

> "An expert appraisement on present existing values, fixes the value at $1,333,200. This is based on the plant stripped to actual values. The debts all told cannot exceed, we believe, $600,000.00. And yet, with a difference of $700,000.00 between the debts and the real value of the plant (on this kind of an appraisement) the preferred stock today has no market value."

That the portion above underlined was by the intervener and his associates in said writing caused to be printed in bold, black type; that in said writing the intervener and his associates further stated:

> "The common stockholders have some equity in the corporation, and to be absolutely fair this interest should be recognized."

That in the said writing which was sent to the preferred stockholders in an endeavor to secure their consent to the plan of the intervener and his associates, it was further stated that the costs of foreclosure, clerk's fees, U. S. Marshal's commissions on sale, receiver's charges, trustee's and attorneys' fees, printing, state tax on new corporation, a new bond issue, interest on the unsecured [89] indebtedness, and penalties on taxes, would amount to at least $250,000.00.

WHEREFORE this defendant prays that the order sought by the intervener in his petition be denied and that the said petition be dismissed.

MARSHALL, MacMILLAN & CROW,
H. H. HENDERSON,
Attorneys for Beet Growers Sugar Company.

[Duly verified.]

[Endorsed]: U. S. District Court, District of Idaho. Filed Oct. 17, 1923. W. D. McReynolds, Clerk. [90]

[Title of Court and Cause.]

PETITION OF INTERVENER TO EXTEND POWERS OF RECEIVER.

To the Honorable FRANK S. DIETRICH, Judge of the United States District Court in and for the District of Idaho:

Your petitioner, E. D. Hashimoto, intervener herein, in his own behalf and in behalf of the Association of Preferred Stockholders of Beet Growers Sugar Company respectfully petitions and shows this Honorable Court:

1. That A. V. Scott is the duly appointed, qualified and acting Receiver of all of the property and assets of Beet Growers Sugar Company and as such receiver is in possession of said property and assets.

2. That the general taxes levied and assessed against the property of the Beet Growers Sugar Company for the years 1920, 1921 and 1922 were not paid when the same became due and payable and pursuant to the laws of the State of Idaho all

of the real property of said company, including the factory buildings and improvements, was on the first Monday of January, 1921, sold to the County of Jefferson, State of Idaho. [91]

3. That no redemption of said property has been made from said tax sale and no payments have been made on account of taxes for said years, or either of them.

4. That on or about the first day of August, 1923, your petitioner was informed by the Treasurer of Jefferson County, Idaho, that the amount due at that time to the Treasurer of Jefferson County on account of taxes and interest for said years 1920, 1921 and 1922 was the sum of $57,872.00.

5. That your petitioner is not informed as to the amount of general taxes due for the year 1923, but is advised that unless one-half of said taxes are paid on or before the fourth Monday in December, 1923, that said taxes for said year 1923 will become delinquent.

6. That all of the property so sold for taxes is in the possession of said A. V. Scott, Receiver of Beet Growers Sugar Company.

7. That by the terms of Section 3254, Idaho Compiled Statutes, 1919, it is provided as follows:

> "Redemption. The property described in any delinquency entry may be redeemed from tax sale by the owner thereof, or any party in interest, on or after the fourth Monday of January after, and within three years from the date thereof, or until tax deed is issued to the county by paying the amount of all delin-

quent taxes and penalties, as shown in such entry, together with the interest accrued thereon, to the tax collector, as prescribed in this chapter: Provided, That no person shall be permitted to redeem any property from sale for delinquent taxes of any year after a tax deed has issued thereon for delinquent taxes of any prior year. Provided further, That no person shall be permitted to redeem any property from sale for delinquent taxes of any year unless the said property has been redeemed from all sales for delinquent taxes of prior years."

That your petitioner is advised that said Section 3254 has not been amended but that Section 3256, Idaho Compiled Statutes, 1919, reading as follows:

"Tax Deed: Issuance. If the property is not redeemed within three years from the date of the delinquency entry, the tax collector or his successor in office must make to the county a deed to the property."

was amended by Chapter 45, Session Laws of Idaho, 1920, to read as follows:

"Tax Deed: Issuance. If the property is not redeemed [92] within *four* years from the date of the delinquency entry, the tax collector or his successor, in office must make to the county a deed to the property."

8. That your petitioner is advised that doubt exists as to whether Beet Growers Sugar Company or A. V. Scott, its receiver, will be entitled to re-

deem said property after the first Monday of January, 1924.

9. That Beet Growers Sugar Company is unable to pay or discharge any portion of said delinquent taxes and your petitioner believes it to be to the best interests of all concerned in the above-entitled proceeding, for the protection of the property of said company in the possession of said receiver, for this Court to authorize said A. V. Scott, Receiver, to borrow as soon as possible, sufficient money to redeem said property from said delinquent tax sale and thereby protect the title of said property for the benefit of all concerned. That said Receiver be authorized to issue his Receiver's certificate or certificates of indebtedness for any moneys so borrowed, said receiver's certificate or certificates to be a first and underlying lien upon all of the property of Beet Growers Sugar Company, ahead of and prior to the lien of the trust deed upon said property being foreclosed herein and ahead of and prior to the lien or claim of any bondholder claiming under said trust deed and ahead of and prior to the claims of any and all creditors of Beet Growers Sugar Company.

WHEREFORE, your petitioner prays that an order be made and entered herein authorizing said A. V. Scott, Receiver of Beet Growers Sugar Company, to borrow such sum or sums as may be necessary to redeem the property of Beet Growers Sugar Company from delinquent tax sales and to pay said taxes as soon as he can borrow said money; that said Receiver be authorized to issue

his negotiable receiver's certificates of indebtedness for money so borrowed, said receiver's certificates [93] by said order to be declared a first and underlying lien upon all of the property of Beet-growers Sugar Company, ahead of and prior to the lien of the Trust Deed to Columbia Trust Company which is being foreclosed herein and ahead of and prior to the claim or claims of any bondholder claiming under said Trust Deed, and ahead of and prior to the claims of any and all creditors of Beet Growers Sugar Company.

(Signed) E. D. HASHIMOTO.
By DEY, HOPPAUGH & MARK,
Attorneys for Petitioner.

Duly verified. [94]

[Endorsed]: Filed December 13, 1923. W. D. McReynolds, Clerk. By M. Franklin, Deputy. [95]

[Title of Court and Cause.]

ORDER OF COURT EXTENDING POWERS OF RECEIVER.

An order was heretofore made in this suit, bearing date the 25th day of October, A. D. 1922, and entered on the 28th day of October A. D. 1922, in which it was ordered, adjudged and decreed that A. V. Scott be appointed receiver of the property of the defendant, Beet Growers Sugar Company, covered by the mortgage made by the said Company which is sought to be foreclosed in the bill of

complaint herein, with the powers and instructions stated in the said order.

NOW, on the 30th day of December A. D. 1922, there comes before me, E. D. Hashimoto, intervenor herein, and representing by his bill of complaint in intervention that he is a preferred stockholder of the Beet Growers Sugar Company, and that he and the other preferred stockholders have a first and prior equity in all of the property of said corporation, after the payment of all corporate debts, and that by the appointment hitherto made, and through the acts of the officers following, the said corporation is not now functioning and its corporate powers are not being exercised;

And the said E. D. Hashimoto, intervenor for [96] himself and the other preferred stockholders, representing to the Court by his complaint in intervention herein, that a large portion of the plant and equipment are valuable due to the good will of the going concern, and that it is necessary to preserve the contracts for the growing of sugar beets to supply the factory of the Beet Growers Sugar Company, and there is grave and imminent danger of dissipation and loss of corporate assets unless the plant is protected as a going concern, and that the receiver be given full power to enter into contracts with beet growers for the season of 1923, and to take into his possession the books, documents, papers and records of the said Beet Growers Sugar Company, and to require all the creditors to appear herein and make proof of their claims, and that all

rights in and to the property of said corporation should be adjudicated to this action, and notice of the intention of said E. D. Hashimoto to supply to this Court for an order as prayed for in said complaint in intervention having been served upon all parties to this action and at the time set for the hearing of said application, no objection having been made to the granting of said order;

AND THE COURT having read and considered the affidavit of Frank A. Johnson on file herein; and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the receivership of said A. V. Scott, be, and the same is hereby extended to cover all of the books, records, documents and papers of said corporation, and the said A. V. Scott be, and he is hereby authorized and directed to take into his care, custody and control all the books, records, documents and papers of every nature of said corporation, but said books, records, documents and papers shall be held by him readily accessible at all reasonable times to the officers of said company for their inspection upon reasonable demand, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said A. V. Scott be, and he is hereby authorized and directed to call for claims of creditors against said Beet Growers Sugar [97] Company and to publish in newspapers of general circulation in Jefferson County, Idaho and Salt Lake County, Utah, notice of creditors to present their claims against said Beet Growers Sugar Com-

pany to said A. V. Scott, said claims to be presented within sixty days after the first publication of said notice, under penalty of having the same disallowed in the discretion of the Court, and said receiver is authorized and directed to mail to each creditor of said company, as shown by the books of said company, to the addresses shown by said books a copy of said notice, said notices to be mailed as soon as possible after the first publication thereof and not later than twenty days before the final date for the presentation of said claims as specified in said notice; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said receiver be, and he is hereby authorized and permitted at his discretion to enter into beet contracts with beet growers in the territory adjacent to the plant of the defendant, Beet Growers Sugar Company, for the season of 1923, upon such terms as in the discretion of the receiver may seem proper, and to advance and furnish to said beet growers seed upon terms in said contracts stated, upon condition, however, that funds necessary to cover the cost and expense of securing such contracts and the furnishing of beet seed be advanced by the preferred stockholders of said company, *said company,* said funds so advanced to be part of the cost and expense of administration of said estate, and said A. V. Scott is hereby authorized to issue non-negotiable receiver's certificates for all sums so advanced, said receiver's certificates to bear interest at the rate of eight per cent per annum from date until paid,

and said receiver's certificates to be paid as part of the cost and expense of administration of said estate,

Said receiver before entering upon his additional duties shall take and subscribe to an oath to faithfully perform the duties of his office and shall execute an additional undertaking to the clerk of this court for the benefit of all whom [98] it may concern in the penal sum of $2500.00 additional, with one or more sureties, the same to be approved by this court, said undertaking to be to the effect that he will faithfully discharge the duties as receiver under the order of the Court.

Dated this 30th day of December, A. D. 1922.

By the Court.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed Dec. 30, 1922. W. D. McReynolds, Clerk. By Pearl E. Zanger, Deputy. [99]

[Title of Court and Cause.]

ORDER OF COURT RE CLAIMS DATED APRIL 17, 1923.

BE IT REMEMBERED that this cause comes on for hearing before the court on this 7th day of April, 1923, pursuant to previous setting of the cause for trial, Wm. Story, Jr., Esq., appearing as solicitor for the plaintiff; Messrs. H. R. MacMillan and Thomas Marioneaux appearing as solici-

tors for the defendant, Beetgrowers Sugar Company, and Messrs. Dey, Hoppaugh & Mark appearing by Frank A. Johnson, Esq., as solicitors for the intervener, E. D. Hashimoto; and it appearing to the court from the allegations of the petition in intervention, which have been taken as confessed by the entry of an order *pro confesso* herein, that a large part of the bonds which are secured by the deed of trust, the foreclosure of which constitutes the subject matter of this suit, are held by certain creditors of the defendant, Beetgrowers Sugar Company, in pledge as security for the payment of their claims against the said defendant, and not under claim of absolute ownership thereof, and it further appearing that the amount of the indebtedness due from the defendant Beetgrowers Sugar Company to such several [100] pledgees and the validity of such pledges should be determined prior to the entry of final decree herein,

IT IS ORDERED that R. W. Jones, Esq., of the city of Pocatello, State of Idaho, be and he is hereby appointed as an examiner of this court to take such testimony as may be offered by the respective parties to this cause and/or holders, whether as pledgees or owners, of the said bonds of the defendant, Beetgrowers Sugar Company, as may be now issued and outstanding, in relation to the ownership of such bonds or the validity of pledges under which the same are held, and also in relation to the amount and validity of the claims against said defendant corporation, which are secured by pledge of such bonds:

IT IS FURTHER ORDERED that this shall be construed as a warning order, requiring all the holders of said bonds, whether pledgees or owners thereof, to appear before the said examiner in this courtroom on the 25th day of May, 1923, then and there to introduce such testimony or other evidence in support of their claims to the bonds so held by them, and in cases of pledgees of said bonds, of the amount of their claims against the defendant corporation, as security for which the bonds are held in pledge, as they may care to offer; and that copies of this order be served upon each and all of the holders of said bonds whose address is known, by the United States Marshal for the respective districts in which the holders of the bonds reside, not less than thirty days prior to the date fixed for said hearing; and further, that the complainant herein be and it is hereby directed to advise all holders of said bonds hereof, in so far as the names and addresses of such holders are known to it;

IT IS FURTHER ORDERED that the said examiner shall have power to adjourn such hearing, from time to time, to such [101] dates and places within the district as may suit the convenience of the examiner and the parties in interest or their respective solicitors, and upon consent of all parties in interest may adjourn the said hearing to such place or places without the district as may best suit the convenience of himself and the various parties in interest. Upon the completion of the taking of the testimony and other evidence in respect to such matters, the said examiner shall report the same

with all convenient speed to the court for its consideration; and all of the parties who have appeared in this suit having consented thereto, IT IS HEREBY ORDERED that further proceedings in this cause may be had either at the City of Pocatello in the Eastern Division, or at the City of Boise in the Southern Division of this District, upon such notice as is now prescribed by the rules or as hereafter may be fixed by the Court;

AND IT IS FURTHER ORDERED that upon the failure of any holder of said bonds to offer evidence in support of his claim thereto as hereinbefore required, such defaulting bondholder shall be debarred from participation in the proceeds of any sale of the property of the defendant, Beetgrowers Sugar Company, which may be made in foreclosure of the said deed of trust under the final decree of this court, until he shall have proved his right and the extent to which he may be entitled to participate therein to the satisfaction of the court.

Dated this 17th day of April, 1923.

(Signed) FRANK S. DIETRICH,
Judge.

Approved:

THOMAS MARIONEAUX,
MARSHALL, MacMILLAN & CROW,
Attorneys for Defendant, Beetgrowers Sugar Company.

DEY, HOPPAUGH & MARK,
Attorneys for Intervenor, E. D. Hashimoto.

[Endorsed]: Filed April 17, 1923. W. D. McReynolds, Clerk. [102]

"Order issued authorizing Receiver to solicit bids for lease of property." [103—104]

[Title of Court and Cause.]

MEMORANDUM DECISION.

December 28th, 1923.

WM. STOREY, Jr., for Plaintiff.

MARSHALL, McMILLAN & CROW and H. H. HENDERSON, for Defendant Sugar Company.

JAS. D. PARDEE, for Intervenor Deardorff.

DEY, HOPPAUGH & MARK and M. E. WILSON, for Intervenor Hashimoto.

C. A. BANDEL, Special Counsel for Claimant Cabbey.

W. STOREY, Jr., Special Counsel for Claimant Lewis.

C. W. MORRISON, Special Counsel for Thomas George.

O. E. McCUTCHEON, for Receiver.

DIETRICH, District Judge:

In view of the conclusion I have reached touching the method of disposing of the property of the Beet Sugar Company and desirability of expediting the sale, I shall defer decision upon some controverted questions and shall state the conclusions reached upon others without extended discussion.

STATUS OF BEET GROWERS SUGAR COMPANY.

1. Stock.

The company has an authorized capital stock of $5,000,000, namely 400,000 shares of common stock of the par value of $2.50 per share, and 400,000 shares of preferred stock of the par value of $10,00 per share. [105]

The amount of stock issued and outstanding does not clearly appear from the record, but it would seem that at least one-half the common stock and between $1,160,050 and $1,200,000 of the preferred stock is outstanding. Only the holders of the common stock have the right to vote, and upon the other hand the preferred stock has priority of right of dividends upon the seven per cent. The stockholders are very numerous.

2. Trust Deed and Bonds:

The plaintiff is the trustee named in a trust deed executed by the Beet Sugar Company, purporting to cover all of its property, real, personal and mixed, as security for an authorized issue of bonds in the amount of $500,000, bearing interest at the rate of 7% per annum. Some of these bonds were sold outright and are held by the purchasers. The majority of them were delivered as collateral.

It is not questioned that the bonds purporting to have been sold outright are valid, subsisting obligations of the company secured by the trust deed.

It is further conceded upon all hands that many of the bonds held as collateral were duly and regularly delivered as such and are valid obligations of the company to the extent of the indebtedness they secure.

As to other of such collateral bonds the validity of the delivery is questioned, but without discussion I am inclined to hold that all such deliveries were authorized and are valid, with the possible exception of a block of $40,000, $22,500 of which came into the possession of one Gabbey, and are held by him or his assigns and $17,500 of which were turned over to one Goodwin and are held by his assignee Lewis. As to the status of these bonds—$40,000—decision is deferred.

3. Indebtedness:

A. Claims secured by trust deed:

Upon account of the bonds so issued and sold outright, and claims secured by bonds held to have been duly delivered as collateral, it is found that the company is indebted in the aggregate principal sum of $264,174, together with accrued and accruing interest, such interest computed up to the [106] 31st day of October, 1923, aggregating $43,784.61.

Because of certain distinctive conditions, and pursuant to stipulation of counsel, I shall allow to the claimant Ogden Iron Works $400 as attorneys' fees, and to Edward E. Jenkins, Receiver, $2,500 on the same account, which several amounts are to be added to these claims. No attorney fees will be allowed to other claimants.

In addition to these amounts there are several thousand dollars owing to Gabbey, estimated at $14,342, on October 31st, 1923, and several thousand dollars owing to Lewis estimated at $6,825 as of the same date, as security for the payment of which Gabbey and Lewis claim to hold as collateral the $22,500 and the $17,500 of bonds above referred to. For reasons disclosed in the discussion of these two claims, as per memorandum hereto attached, it is impossible at this time to state the precise amount due to either of these claimants, portions of their claims being dependent upon compliance with certain conditions precedent.

B. Judgments:

(a) Judgment in favor of Idaho Farm Loan Company, a corporation, $137.65, dated October 20, 1922.

(b) Judgment in favor of Thomas George, $224.05 and $1,072.45 both dated October 24, 1922. (The claim of an attachment lien by this creditor is denied.)

(c) Judgment in favor of First National Bank of Logan, Utah, $1,762.74 dated October 26, 1922.

These judgments will be recognized as liens upon the real property of the Beetgrowers Sugar Company, subject to the lien of the trust deed.

C. Unsecured Claims:

I find no evidence in the record disclosing the exact total of the unsecured claims, but in the arguments it was repeatedly stated that they are very numerous and aggregate a large sum. In the complaint in intervention, filed by the intervenor

Hashimoto, it is alleged they approximate $200,000 and defendant alleges specifically $214,624.85. Presumably interest is to be added. Perhaps for the purposes of the present decision it may be assumed that such claims aggregate at least $200,000. [107]

D. Taxes:

I am not advised as to the precise aggregate of taxes and penalties for delinquency, but from representations made in the pleadings and during the course of the trial, and more recently by petition for an order authorizing the receiver to borrow money to take care of the taxes, it may be safely assumed that they approximate $75,000.

E. Expenses of Receiver:

I am unable at this time to state with any degree of certainty the amount of the receiver's certificates outstanding for the unpaid accrued and accruing expenses of the receiver, for the payment of which there will be no receivership funds available.

F. Trustee's Compensation & Attorney Fees:

Because of the doubt as to whether or not it will be necessary to foreclose the trust deed by decree and foreclosure sale, I do not at this time fix the amount of compensation to be paid to the trustee and to its attorneys, but in any view the item will be substantial and will have to be taken into consideration in estimating the amount for which the property must be sold to take care of certain classes of claims.

MODE OF SALE OF SUGAR COMPANY'S PROPERTY.

The question of whether or not the property

should be sold without redemption has given rise to a very earnest controversy and upon its elaborate arguments have been submitted. All of the property, real and personal, purports to be covered by the trust deed, and all of it is used together as a unit to carry on a single enterprise, and substantially all of it is essential to the successful operation of the plant. Comparatively speaking, the personal property is of small value, and yet it is substantial. If the sale is under a degree of foreclosure and the usual course is pursued, the sale of the real property would be subject to redemption for a year, whereas the personal property would have to be sold outright with absolute title and no period of redemption, thus possibly separating the two classes of property, not without some sacrifice. The Trustee urges a sale without redemption. The intervenor Hashimoto representing an organization of a considerable number of the preferred stockholders, very earnestly joins in this contention. Otherwise than by the company itself, the [108] unsecured creditors can hardly be said to be represented in the proceedings, Hashimoto does not speak for all, but does speak for a representative number of the preferred stockholders. The sugar company strongly opposes such a sale, and argues in the first place that it cannot be legally made if the sale is had upon the foreclosure of the trust deed, and that as a matter of expediency it ought not to be made either upon such a sale or at a receivership sale.

Strictly speaking there is no competent, definite evidence touching the reasonable value of the com-

pany's property, either in parts or as a whole. There is in the record a circular issued under the authority of the Hashimoto organization containing a statement to the effect that the property has been appraised by reliable appraisers who fixed the value at $1,333,200, and references by the various parties to the controversy have been made to this estimate, and at no time, so far as I recall, has it been seriously suggested that the property could be sold for a greater amount. If that be true it is apparent that the common stockholders and the company, in so far as it represents only the common stockholders, have no real interest in the question of whether the sale is made with or without redemption, for the aggregate of the secured claims, the unsecured claims, the taxes, and the unpaid expenses of the receivership and of the trustee, taken together with the amount of outstanding preferred stock, which must be paid before anything could go to the common stock, will very greatly exceed the amount which there is any reason to expect could be gotten for the property at a sale, either with or without redemption.

In view of the heavy indebtedness of the receivership, if we take into consideration the large item of taxes which the receiver has now been directed to pay by the issuance of receiver's certificates, constituting a first lien upon the property, I am inclined to the view that I should before resorting to foreclosure sale, attempt a receivership sale, the same to be without redemption. The considerations brought forward for an expeditious disposition of

the property, finally and absolutely, are very cogent. Some preparation must be made within the near future for the season of 1924, or the plant will be idle for a year with a very great incidental loss. At a receivership sale I am inclined to require that there be a bid for at least a sufficient amount to cover all the indebtedness of the company, secured and unsecured. For the reasons already explained [109] the amount of such indebtedness cannot at this time be definitely stated, but if we take March 1st, 1924, as the date of sale, it is safe to say that at that time the total, including accrued interest and all expenses, will range somewhere between $700,000 and $800,000, and will probably approximate $750,000. Parties interested may therefore assume that a sale without redemption will not be authorized for less than $800,000, and after conference or further hearing, and upon more mature consideration, an upset price substantially in excess of that amount may be fixed. While there is no evidence to support the intimations of ulterior motives or purposes, on the part of the trustee and the intervenor Hashimoto, in urging a sale without redemption, and on the part of the Sugar Company and minor interests in opposing such a sale, it is familiar knowledge that such a contingency is always possible in the disposition of a property of the character of that involved, and it is also well known that parties having comparatively small interests are unable to protect themselves without the aid of the court, and it shall be my purpose to see that the property is not sacri-

ficed to the profit of the powerful and to the loss of the weak. It is scarcely to be expected that the unsecured creditors are or will be in a position to protect themselves, and unless compelled by necessity I shall not be inclined to authorize a sale for an amount insufficient to take care of their claims. If at the proposed sale enough cannot be realized to cover their claims, it is not impossible that I shall conclude it only proper to leave to them at least the protection vouchsafed in the period of redemption provided for ordinary sales under foreclosure.

Upon the other hand, with such information as is now available I can hardly expect to effect a sale for an amount sufficient to cover the preferred stock in full. It would therefore seem that the preferred stockholders will be under the necessity of organizing and protecting themselves in some manner if they feel that there is a substantial equity for them. In so far as they are represented they urge a sale without redemption, and they must assume at least a part of the responsibility of seeing that at such a sale the property brings a fair price.

In order more intelligently to draft a proper order for the proposed receivership sale, I deem it necessary to have a conference with counsel and a supplemental hearing. Such a conference or hearing is accordingly fixed for January 7th at 2:00 P. M. at the courtroom at Pocatello. At such hearing I desire that: [110]

1. The claimants Lewis and Gabbey show compliance with the conditions upon which certain

items of their claims are now contingent; in default of which the items will be disallowed.

2. Complete data touching unsecured claims be made of record so that the precise amount of these claims and the interest thereon may be accurately computed. The receiver should give assistance upon this head by tabulating claims on file, with dates from which interest should be computed.

3. Complete data from which we may accurately compute the net indebtedness of the receivership, with a careful estimate of accruing expenses up to March 1st, 1925. To the matter of furnishing this data, the receiver will be expected to give his attention.

MEMORANDUM COVERING DETAILS OF LEWIS AND GABBEY CLAIMS.

A. W. LEWIS CLAIM.

Subject to a possible reduction by way of set-off the following items are admittedly correct:

(a) Note of Beet Sugar Company to Gabbey and Goodwin, and transferred by them to Lewis, for $5,000, dated September 27, 1920, with interest from its date at 8%, credit interest payments aggregating $369.89.

(b) Note of Beet Sugar Company to Goodwin, and transferred to Lewis, for $2,500, dated Sept. 27, 1920. Interest at 8% from its date.

(c) Sundry checks issued by the Beet Sugar Company in the summer and fall of 1922 for valid claims, which checks were not paid and by assignment are held by Lewis, aggregating the principal sum of $1,900.17. Against these checks charge one-

half of claim allowed Idaho Falls State Bank, See Lewis' opening brief (page 2), $659.49, leaving a net principal of $1,240.68. Add interest on this net principal at 7% per annum from October 31, 1922.

(d) Valentine note for $1,000, given November 22, 1920. All interest paid up to December 20, 1921, and $500 on principal as of that date, leaving the net principal due Lewis the holder of the note of $500. Add interest [111] at 8% from December 20, 1921.

Incidentally it may be stated in passing that for the several claims aggregating over $9,000, besides interest, Lewis paid less than $5,000.

CONTESTED CLAIM.

In addition to the foregoing items, Lewis makes a claim for $5,000 which is vigorously contested. The claim arises out of an argument entered between the claimant and one A. G. Goodwin, who was at the time President of the Beet Sugar Company, by the terms of which in consideration of $5,000 to be paid to the claimant he was to give all of his time to "refinancing" the Beet Sugar Company. This contract is dated June 20, 1922.

At the hearing before the examiner, the questioning of the claimant touching the transaction was so grossly and persistently violative of the most elementary rules of evidence that I have seriously doubted whether any consideration at all should be given to the testimony. Not only were the questions highly leading, but in vital respects they were so formulated as to elicit nothing but incom-

petent conclusions, and sometimes contents of records or other written instruments. It is quite inconceivable that such a course would have been pursued had the hearing been before the court instead of an examiner.

But according to such "evidence" every reasonable intendment, I am still inclined to reject the claim in its entirety.

In the first place I do not think it is shown that the written memorandum relied upon ever became an obligation of the Beet Sugar Company. On the face of it, it does not purport to be such an obligation, but only the agreement of A. G. Goodwin. But if it were otherwise, it is not shown that Goodwin had any authority to enter into an obligation of the character on behalf of the Beet Sugar Company. By interrogating the claimant in the manner above described, counsel got him to express his conclusion that the board of directors ratified the agreement, but he specifically admits that he doesn't know that they were ever advised of the existence or of the terms thereof. And finally I am inclined to think the instrument void for indefiniteness. [112]

There is a suggestion of possible recovery upon the basis of *quantum valebat,* but the only testimony as to the value of claimant's services is so indefinite and so inconsistent that no award could be made under that theory, and besides it isn't shown that the services were of any value or benefit to the company.

But in the second place if we assume the agreement valid and binding upon the company, plainly

under his own testimony the claimant himself failed to perform and is chargeable with a breach of the agreement. The reason he assigns for his failure is so trivial as to raise the question of his good faith. Because one of the stockholders demanded a consideration for turning his stock over to a voting trust which was part of the scheme for "refinancing" from which claimant was to receive a very substantial private profit, claimant professes to have become "disgusted," and thereafter practically gave up consideration of "refinancing" the company and turned his attention to the organization of a group of its stockholders. If, as for present purposes we are assuming, the company was a party to the contract, it had no obligations touching the attitude or conduct of its stockholders. They were not subject to its control in respect to the disposition of their stock, and hence the demand by which claimant was "disgusted," even if unreasonable, did not constitute a breach or warrant claimant in declining to do what he had agreed to do.

In the third place it was a gross disregard of his duty for claimant to seek to refinance the company in the manner explained by him. He was to receive $5,000 in cash for his services, and he was to "devote" himself "entirely" to the enterprise. It was his duty to "refinance" on the best terms possible for the company. The duty was such that his relation to the company was highly fiduciary. Of necessity the company must rely upon his judgment, and to be faithful to his trust he must remain

disinterested. He could not serve two masters. And yet while he was thus being paid $5,000 for furthering and safeguarding the interests of his principal, he set on foot a scheme, which, if carried out, would be onerous to the company at best, and out of which he was privately, and so far as appears, secretly to receive a very considerable profit. [113]

For the reasons stated the claim of $5,000 for compensation or salary will be denied.

SET-OFF.

The claim by the Beet Sugar Company of a set-off against the admitted claims of Lewis, hereinbefore discussed, arose in this way:

Some time after claimant entered into the agreement with Goodwin, above discussed, it became apparent that failure was wholly probable. The credit of the company was exhausted and substantially the only salable asset it had was a considerable quantity of molasses—a by-product from the manufacture of sugar. To hinder and defeat the general creditors who had a right to attach, and were threatening to resort to that remedy, some of the officers of the company entered into a collusive understanding with Lewis, by which an ostensible but not a real sale of this molasses was made to him. Accordingly he took possession of and sold the molasses to the Amalgamated Sugar Company, and received in part payment of the purchase price the aggregate sum of $6,512.73 which amount he admittedly deposited in a bank in his name, but as already indicated he secretly held the deposit in trust for

the company. Upon subsequent demands made by the officers of the company he declined to pay over this money or render any account therefor. At the hearing before the examiner he exhibited a "statement" showing that he and Goodwin had absorbed the entire deposit. One item of this statement is "Expenses of A. W. Lewis from July to Nov. 15, 1922, $1,078.27." Although knowing that he would be called upon to make disclosure of the disposition of the money, he had with him when he testified no vouchers or book account, and was unable to give any explanation of the items going to make up the total. At the final hearing in this court in October, his counsel offered a paper purporting to be signed by him, with a measure of itemization, but upon objection of the company that the paper was incompetent it was necessarily excluded. Even in this paper we are furnished with such items as "Hotel Expenses, including automobiles and other items from 4th Sept. to 8th Nov. 23, $336.57." Such a statement would be wholly inadequate, even if it were competent. The burden was upon the claimant [114] as trustee to show that he had made an authorized and honest expenditure of the funds, and he having failed so to do credit for the entire item must be denied.

Another item is $2,743.91 paid to Goodwin to cover his "traveling expenses." Touching the details we have no competent evidence, but for reasons now to be stated an extended discussion is not to be necessary. The claimant called as a witness one Broberg, who was at one time a director and auditor

of the company, and elicited from him the information, in conclusion of his testimony, that this Goodwin account had been duly checked up by the company and allowed for $2,621.12, that being $122.81 less than the amount Lewis claims to have paid on account thereof. The same witness further testified that upon such audit a note was duly executed by the company and delivered to Goodwin on April 26th, 1922, for $2,140.30, and on October 5th, 1922, another note for the balance of $480.82, and it further appears that these notes are outstanding against the company.

The same witness testified that most of the other items in the Lewis statement are correct, and it further appears that some of them are supported by vouchers. Two items, however, namely $300.00 and $20.00, to Goodwin on account of salary, are conceded by claimant's counsel to be incorrect, and these, together with the difference above noted of $122.81, making a total of $442.81, it is further conceded should be charged back to Lewis.

Summarized, therefore, the molasses account stands as follows:

Claimant received $6,512.73. He paid out irregularly, but for the use and benefit of the company, $2,370.55, leaving a balance of $4,142.18, with which, together with interest thereon from November 1st, 1922, he is chargeable, and the same will be deducted from his admitted claims.

It is to be added that at the hearing his counsel suggested that they would make an effort to procure and deliver up for cancellation the two notes

executed by the company to Goodwin, which were still outstanding. If these notes are procured and delivered for cancellation, claimant will be given further credit for the amounts thereof. [115]

A. W. GABBEY CLAIMS.

The facts pertaining to these claims are so fully stipulated (Examiner's Transcript, p. 39 et seq.) that I shall not take the space or time to restate them here, but shall discuss only the questions left open for decision, in making up the decree or order resort must be had both to the stipulation and this memorandum.

In the main the amounts claimed by Gabbey are conceded to be due, and he should have judgment therefor, upon certain reasonable and stipulated conditions, which so far as I am advised have not been complied with. They are:

1. Delivery into court of the notes evidencing the claims which are based upon notes, namely: Notes for $2,500, $5,000, $300.00, $1,358.49, $423.62, $125.00, $61.38 and $480.82. (This latter note would seem to be one of the two notes referred to in the latter part of the discussion of the Lewis claims, and of course cannot be allowed to both Gabbey and Lewis. In that discussion it is referred to as being payable to Goodwin, and under the stipulation to either Goodwin or Gabbey. If Gabbey produces and files this note, he will, in the absence of a contest, be given credit for it, and upon the other hand, if Lewis produces and files it, in the absence of a contest, credit will be given to him therefor.)

I do not deem it necessary to have a release touch-

ing the three notes represented as being held as collateral by the Rigby Bank, but the notes themselves must be delivered up for cancellation by Gabbey before he can be given credit therefor.

2. The other item of the claim is $1,047.10, the same being the aggregate amount of a number of unpaid checks, issued to Gabbey by the company, or to divers persons to whom it was indebted. They are admitted to be nothing more, in effect, than memoranda of amounts justly due the payees named, or their assignees, and before Babbey can be given credit therefor he must produce evidence that such amounts have been paid on behalf of the company, and that the original claimants no longer have any valid claim on account therefor against the company. He should produce either receipts showing that he has satisfied the payees, or orders or assignments, or some other satisfactory evidence protecting the company against a double charge. He should further produce a verified statement [116] that no one of the items evidencing by the checks is included in any one, either of his other claims or of Goodwin's claims assigned to and presented by Lewis.

3. Claimant guaranteed two claims against the Sugar Company, one in favor of the Rigby Star for $859.71, and another to Hamberg & Sells for $566.61. Obviously he cannot have credit for these items until he has actually paid them. As evidence of such payment he must present duly authenticated receipts or orders from the two creditors.

4. There will be charged against Gabbey, and

deducted from the amount otherwise found to be due him, one-half of the claim of the Idaho Falls State Bank, the same as in the case of the Lewis claim and for the same reasons.

[Endorsed]: U. S. District Court, District of Idaho. Filed Dec. 28, 1923. W. D. McReynolds, Clerk. [117]

"Order issued January 8, authorizing Receiver to solicit bids for lease of property for year 1924." [118]

"Order issued authorizing Receiver and Auditor to determine amount of unsecured claims." [119–120]

Copy.

MEMORANDUM ORDER OF SALE OF PROPERTY BY RECEIVER.

January 19, 1924.

To the Attorneys of Record in the Beet Growers Sugar Company Case:

Gentlemen:

Upon consideration of the proposed decree, together with the objections thereto, and the status of the case, I have found it extremely difficult to work out a decree which will give reasonable protection to all parties in interest, and I have therefore practically concluded to follow my original conclusion that a sale should be made by the receiver. To that end, I have attempted to work out an order, a rough draft of which is enclosed for your consideration and suggestions.

I should like to have you give the matter im-

mediate consideration and make such suggestions, if any, as you care to make so that I may have them not later than Thursday of next week, that is January 24th. Little delay will thus be entailed because, on account of apparent inaccuracies in the decree as proposed, and its inadequacy in some particulars, it is not in proper condition to be signed.

Very truly yours,
(Signed) FRANK S. DIETRICH,
U. S. District Judge. [121]

In the District Court of the United States in and for the District of Idaho, Eastern Division.

COLUMBIA TRUST COMPANY, a Corporation,
Plaintiff,

vs.

BEET GROWERS SUGAR COMPANY, a Corporation, et al.,
Defendants.

DRAFT OF PROPOSED ORDER FOR SALE BY RECEIVER.

It appearing:

1. That the net indebtedness of the Receiver herein, after crediting the $35,623.00 still to be paid to the receiver on account of current lease, aggregates approximately $67,000, for the payment of which there are no available funds or income.

2. That the taxes for 1923, amounting to $12,-810.00 besides penalties and interest, are unpaid:

3. That as itemized in Exhibit "A" hereto attached, there is due on outstanding bonds secured by trust deed on all of the property of the defendant company, Thirty-three Thousand, Six Hundred and Eighty-four and 69/100 ($33,684.69) Dollars, inclusive of principal and interest thereon computed to January 15th, 1924, and upon divers claims secured severally by the other bonds covered by said trust deed, aggregating ——, inclusive of principal and interest computed up to January 15th, 1924, as appears in detail in said Exhibit "A";

4. That as is disclosed in the memorandum decision filed herein December 28th, 1923, there are judgments constituting liens upon the property of the defendant subject to said trust deed aggregating Three Thousand, One Hundred and Ninety-six and 79/100 ($3,196.79) Dollars, with interest [122] thereon at the rate of 7 per cent per annum from October 20th, 1922;

5. That there are numerous unsecured claims which it is estimated will, with interest, approximate Two Hundred Thousand and no/100 ($200,-000.00) Dollars.

6. That allowances must be made to cover compensation of trustee for services rendered and to be rendered, and for its expenses accrued and accruing, inclusive of attorney fees, and for accrued and accruing expenses of the receivership, all of which aggregate several thousand dollars;

7. And it therefore appearing, that the total in-

debtedness and expense to be paid will, by the time the sale of the property can be consummated, approximate at least $650,000.00;

8. And it further appearing that it will be necessary to sell all of the property of the defendant Beet Growers Sugar Company to pay said indebtedness, and that said property constitutes a single operating unit, and should be sold together in one parcel, and that in view of the status and exigencies of the case a better price can in all probability be gotten by the receiver than by a master upon foreclosure sale, and that by a receiver's sale the rights of all parties interested may be more fully protected;

IT IS THEREFORE ORDERED, That the receiver be and he is hereby authorized and directed, with all reasonable dispatch, to make a sale of said property, subject to the approval of the Court.

Time and Place of Sale:

Said sale shall be made at such time as the receiver shall designate, not earlier on the day fixed than ten o'clock in the morning, or later than five o'clock in the afternoon, at the front door of the courthouse at Rigby, Jefferson County, Idaho.

Notice of Sale:

Notice of such sale, particularly stating the time and place thereof, shall be published by the receiver at least once a week for at least four weeks next prior to the date of the sale, in a newspaper of general circulation published at Rigby, Idaho, and in a newspaper of general circulation published

at Idaho Falls, Idaho, and a newspaper [123] of general circulation published at Salt Lake City, Utah. In addition to stating the time and place, said notice shall contain a brief general description of the property to be sold, with the added clause that whether particularly referred to or not the description is intended to cover and include all of the property, real, personal and mixed, owned by the Beet Growers Sugar Company, constituting principally a beet sugar factory at or near Rigby, Idaho, with all its appurtenances and all property used in connection therewith, and with the additional statement that any error or deficiency in the description shall not invalidate the sale.

Said notice shall contain the further statement that it is given pursuant to this order, appropriate and specific reference to which shall be made, with the further statement that the sale will be made upon the terms and subject to the conditions and directions of the order, a copy of which will be furnished without charge to anyone interested upon application to the undersigned receiver at his office at Idaho Falls, Idaho.

Payment by Purchaser:

Any competent person or corporation may become a purchaser at such sale, but immediately upon the announcement by the receiver of the acceptance of a bid, subject to the Court's approval, the bidder must pay to the receiver $10,000.00 to be credited upon the purchase price if the Court approves the sale, and to be forfeited to the receiver as liquidated damages in case the bidder

fails, upon such approval of sale, to pay the residue of the purchase price in the manner and at the times as herein specified.

In case of a failure of the purchaser to comply with this condition, the receiver will forthwith reject such bid and proceed with the sale the same as if such bid had not been made.

Within five days after the approval of a bid by the Court, the purchaser shall pay an additional amount, which taken together with the initial payment, shall equal at least 10 per cent of the whole price bid. This additional amount also shall be forfeited to the receiver as liquidated damages in case of failure of the purchaser to make good his bid and pay the whole amount of the purchase price as herein provided. Both of said payments [124] shall be made in money or the equivalent thereof, namely by draft or certified check approved by the receiver.

The remaining portion of the purchase price may be paid in three equal installments, thirty, sixty and ninety days after the approval of the sale, with interest thereon at the rate of 7 per cent per annum from the date of the order of approval by the Court, and at least 10 per cent of each installment shall be in money, or its equivalent as above defined. The residue of each installment may be paid by delivery to the receiver of receiver's certificates, representing outstanding indebtedness of the receiver, owned by or assigned to the purchaser, at their full face value; or by outstanding bonds now held by Hawley & Hawley, J. F. Feather-

stone or Phillip Horan, or by the claims secured by bonds as collateral, together with such collateral bonds, all as appears in Exhibit "A," hereto attached. Provided that said bonds, or claims with collateral bonds, are turned over by the purchaser to the receiver, and provided further that said bonds and claims with collateral bonds shall be accepted by the receiver for only such amount as would equal the distributive share of the proceeds of the sale to which such bonds and claims would be entitled in case the full purchase price of the property has been paid in money.

When a sufficient amount has thus been received to cover all the indebtedness of the receiver, the compensation and expense of the trustee and its attorney, and the secured indebtedness represented by the outstanding bonds and claims with collateral bonds, the residue may be paid either in money or by the turning over to the receiver of unsecured claims at a value equivalent to the distributive share such claims would be entitled to receive were the purchase price paid in cash.

Title and Possession of Property Sold:

The sale of the property will be made free from all adverse claims and all incumbrances, except the taxes and penalties thereon for 1923, which are unpaid, the taxes which may be levied for 1924, and the existing [125] lease of the sugar factory by the receiver to one Hashimoto, which will terminate at the opening of the operating season of 1924. In this lease and the rentals due or to become due thereon, the purchaser shall acquire no

interest or right. But as to the lease of the plant for 1924, if any shall be made by the receiver, with the approval of the Court, prior to the date of sale, the purchaser shall be deemed to be the assignee thereof and shall succeed to all the rights and all the obligations of the receiver thereunder, and the sale shall be deemed to have been made subject to the rights and the right of possession of the lessee under such sale.

Upset Price:

No bid for the property shall be accepted by the receiver for a sum less than $650,000.00.

Redemption:

It being considered that if possible the sale should be made subject to the right of redemption by parties interested, such right to be exercised within a reasonable time and upon reasonable terms, with reasonable inducements to the purchaser to make the purchase subject to such right; it being noted that the upset price so fixed will be sufficient to cover all indebtedness of the company, and that therefore, in addition to the company the only interested parties are the preferred stockholders who have rights and interests that the company may not be willing or able to protect.

IT IS FURTHER ORDERED, that the said sale be made subject to the right of redemption, such right to be exercised within six months following the date of the approval of the sale. To redeem from the purchaser, the redemptioner must pay to him or it, or to the receiver, or to a trustee to be a trustee to be appointed by the Court for that

purpose, for the use and credit of the purchaser, not only the purchase price in full which the purchaser has paid for the property, but interest thereon at the rate of 10 per cent from the date of the approval of the sale, and in addition thereto the sum of Fifteen thousand ($15,000.00) Dollars. [126]

The Beet Growers Sugar Company shall have the exclusive right so to redeem during the first three months of the period, and the further right to redeem thereafter and within the six months if no other redemption has been made.

If the company does not redeem in the first three months, any organization of the preferred stockholders, comprising at least 30 per cent of the outstanding preferred stock, may redeem.

Provided and upon condition that such organization shall not exclude any preferred stockholders, but that within a reasonable length of time, all preferred stockholders may come into the same upon an equal footing.

Instruments of Conveyance:

Upon approval by the Court of the sale, the Receiver shall, upon order of the Court, execute to the purchaser a certificate of sale with appropriate recitals of the conditions hereof, relative to the redemption and at the expiration of the period of redemption, if no redemption shall have been made, the purchaser, or in case of redemption, the redemptioner, shall be entitled to appropriate instruments of conveyance to be made either by the receiver or a Special Master to be appointed for that purpose all pursuant to the further orders of the Court, and

if the property be not redeemed by the company it will be required to execute and deliver confirmatory conveyances.

Until such conveyances are executed, the property shall remain or be deemed to be in the possession and subject to the supervision of the Court.

Sale Without Redemption:

IT IS FURTHER ORDERED, that should the Receiver be unable, after reasonable effort, to procure an offer of at least $650,000.00 for the property, subject to redemption, he is directed to continue the sale over to the following day after making such effort, and then offer the property for sale without redemption, but upon such sale he is not to accept any bid for less than $750,000.00. The terms of payment for such sale is to be in substantial conformity with the requirements hereinbefore set forth for sale with redemption. [127]

Proceeds of Sale:

The proceeds of the sale paid to the receiver or into Court from time to time shall be kept and distributed in the manner and to the persons and upon the conditions hereafter to be ordered and prescribed by appropriate orders made from time to time as the need may arise.

Description of Property:

The following is a description of the property to be sold:

(Here will be entered a description substantially as set forth in the proposed decree prepared by counsel for plaintiff.)

[Lodged.] [128]

[Title of Court and Cause.]

ORDER FOR SALE BY RECEIVER.

It appearing:

1. That the net indebtedness of the Receiver herein, after crediting the $35,623.00 still to be paid to the Receiver on account of current lease, aggregates approximately 67,000.00, for the payment of which there are no available funds or income;

2. That the taxes for 1923, amounting to $12,-810.00, besides penalties and interest, are unpaid;

3. That as itemized in Exhibit "A," hereto attached, there is due on outstanding bonds secured by trust deed on all of the property of the defendant company, Thirty-three Thousand, Six Hundred and Eighty-four and 69/100 ($33,684.69) Dollars, inclusive of principal and interest thereon computed to January 15th, 1924, and upon divers claims secured severally by the other bonds covered by said trust deed, aggregating Three Hundred and Three Thousand, Six Hundred and Sixty and 64/100 ($303,-660.64) Dollars, inclusive of principal and interest computed up to January 15th, 1924, as appears in detail in said Exhibit "A"; a total secured indebtedness of Three Hundred and Thirty-seven Thousand, Three Hundred and Forty-five and 33/100 ($337,-345.33) Dollars. [129]

4. That, as is disclosed in the memorandum decision filed herein December 28th, 1923, there are judgments constituting liens upon the property of the defendant subject to said trust deed aggregating Three Thousand One Hundred and Ninety-six and

79/100 ($3,196.79) Dollars, with interest thereon at the rate of 7 per cent per annum from October 20th, 1922.

5. That there are numerous unsecured claims, which it is estimated will, with interest, approximate Two Hundred Thousand and no/100 ($200,000.00) Dollars;

6. That allowances must be made to cover compensation of trustee for services rendered and to be rendered, and for its expenses accrued and accruing, inclusive of attorney fees, and for accrued and accruing expenses of the receivership, all of which aggregate several thousand dollars;

7. And it therefore appearing that the total indebtedness and expense to be paid will, by the time a sale of the property can be consummated, approximate at least $650,000.00;

8. And it further appearing that it will be necessary to sell all of the property of the defendant Beet Growers Sugar Company to pay said indebtedness, and that said property constitutes a single operating unit, and should be sold together in one parcel, and that in view of the status and exigencies of the case a better price can in all probability be gotten by the Receiver than by a Master upon foreclosure sale, and that by a Receiver's sale the rights of all parties interested may be more fully protected;

IT IS THEREFORE ORDERED, That the Receiver be and he is hereby authorized and directed, with all reasonable dispatch, to make a sale of said property, subject to the approval of the Court.

Time and Place of Sale:

Said sale shall be made at such time as the Re-

ceiver shall designate, not earlier on the day fixed than ten o'clock in the morning, or later than five o'clock in the afternoon, [130] at the front door of the courthouse at Rigby, Jefferson County, Idaho. Notice of Sale:

Notice of such sale, particularly stating the time and place thereof, shall be published by the Receiver at least once a week for at least four weeks next prior to the date of the sale, in a newspaper of general circulation published at Rigby, Idaho, and in a newspaper of general circulation published at Idaho Falls, Idaho, and a newspaper of general circulation published at Salt Lake City, Utah. In addition to stating the time and place, said notice shall contain a brief general description of the property to be sold, with the added clause that whether particularly referred to or not the description is intended to cover and include all of the property, real, personal and mixed, owned by the Beet Growers Sugar Company, constituting principally a beet sugar factory at or near Rigby, Idaho, with all its appurtenances and all property used in connection therewith, and with the additional statement that any error or deficiency in the description shall not invalidate the sale.

Said notice shall contain the further statement that it is given pursuant to this order, appropriate and specific reference to which shall be made, with the further statement that the sale will be made upon the terms and subject to the conditions and directions of the Court, copy of which will be furnished without charge to anyone interested upon application to the undersigned Receiver at his office at Idaho Falls, Idaho.

Adjournment and Further Notice:

The Receiver shall have the power to adjourn the sale from time to time to a date certain, and in case of failure to receive a bid complying with the conditions herein prescribed he shall orally announce the adjournment of the sale to a date certain, and if, after failure to obtain a satisfactory bid under the conditions herein prescribed, the Court shall make an order modifying such conditions and directing that the property [131] be again offered for sale. It shall not be necessary to republish in full the original notice of sale, but in the new notice it shall be necessary only to state the time and place and the change in the conditions and terms made by the order of the Court, with a reference to the original publication for further particulars.

Inspection of Property:

The property advertised to be sold may be inspected by intending bidders prior to such sale, subject to such reasonable requirements as the receiver may prescribe.

Payment by Purchaser:

Any competent person or corporation may become a purchaser at such sale, but immediately upon the announcement by the receiver of the acceptance of a bid, subject to the court's approval, the bidder must pay to the receiver $10,000.00, to be credited upon the purchase price if the court approves the sale, and to be forfeited to the receiver as liquidated damages in case the bidder fails, upon such approval of sale, to pay the residue

of the purchase price in the manner and at the times as herein specified.

In case of failure of the purchaser to comply with this condition, the receiver will forthwith reject such bid and proceed with the sale the same as if such bid had not been made.

Within five days after the approval of a bid by the court, the purchaser shall pay an additional amount which taken together with the initial payment, shall equal at least 10 per cent of the whole price bid. This additional amount also shall be forfeited to the receiver as liquidated damages in case of failure of the purchaser to make good his bid and pay the whole amount of the purchase price as herein provided. Both of said payments shall be made in money, or the equivalent thereof, namely, by draft or credited check approved by the receiver.

The remaining portion of the purchase price may be paid in three equal installments, thirty, sixty and ninety days [132] after the approval of the sale, with interest thereon at the rate of 7 per cent per annum from the date of the order of approval by the court, and at least 10 per cent of each installment shall be in money, or its equivalent as above defined. The residue of each installment may be paid by delivery to the receiver of receiver's certificates, representing outstanding indebtedness of the receiver, owned by or assigned to the purchaser, at their full face value; or by outstanding bonds now held by Hawley & Hawley, J. F. Featherstone, or Philip Horan, or by the claims secured by bonds as collateral, together with such collateral bonds,

all as appear in Exhibit "A," hereto attached. Provided that said bonds, or claims with collateral bonds, are turned over by the purchaser to the receiver, and provided further that said bonds and claims with collateral bonds shall be accepted by the receiver for only such amount as would equal the distributive share of the proceeds of the sale to which such bonds and claims would be entitled in case the full purchase price of the property had been paid in money.

When a sufficient amount has thus been received to cover all the indebtedness of the receiver, the compensation and expense of the trustee and its attorney, and the secured indebtedness represented by the outstanding bonds and claims with collateral bonds, and the judgments herein above referred to which constitute second liens, the residue may be paid either in money or by the turning over to the receiver of unsecured claims at a value equivalent to the distributive share such claims would be entitled to receive were the purchase price paid in cash.

Title and Possession of Property Sold:

The sale of the property will be made free from all adverse claims and all incumbrances, except the taxes and penalties thereon for 1923, which are unpaid, the taxes which may be levied for 1924, and the existing lease of the sugar factory by the receiver of one Hashimoto, which will terminate before the opening [133] of the operating season of 1924. In this lease and the rentals due or to become due thereon, the purchaser shall acquire

no interest or right. But as to the lease of the plant for 1924, if any shall be made by the receiver, with the approval of the court, prior to the day of sale, the purchaser shall be deemed to be the assignee thereof and shall succeed to all the rights and all the obligations of the receiver thereunder, and the sale shall be deemed to have been made subject to the rights and the right of possession of the lessee under such lease.

Upset Price:

No bid for the property shall be accepted by the receiver for a sum less than $650,000.00.

Redemption:

It being considered that if possible the sale should be made subject to the right of redemption by parties interested, such right to be exercised within a reasonable time and upon reasonable terms, with reasonable inducements to the purchaser to make the purchase subject to such right; and it being thought that the upset price so fixed will be sufficient to cover all indebtedness of the company, and that therefore, in addition to the company the only interested parties are the preferred stockholders, who have rights and interests that the company may not be willing or able to protect; and it also having been shown that it is highly important that the sugar factory be kept a going concern and that it operate each year, and that to that end it is necessary to contract with farmers for the raising of sugar beets, beginning about February 1st of each year for the season's run of the current year, and that therefore a period of

redemption longer than six months would extend into the 1925 season, and hence jeopardize operations for that year;

IT IS FURTHER ORDERED, That the said sale be made subject to the right of redemption, such right to be exercised within six months following the date of the approval of the sale. To redeem from the purchaser, the redemptioner must pay to him or [134] it, or to the receiver, or to a trustee to be appointed by the court for that purpose, for the use and credit of the purchaser, not only the purchase price in full which the purchaser has paid for the property, but interest thereon at the rate of 10 per cent from the date of the approval of the sale, and in addition thereto the sum of Fifteen Thousand ($15,000.00) Dollars.

The Beet Growers Sugar Company shall have the exclusive right so to redeem during the first three months of the period, and the further right to redeem thereafter and within the six months if no other redemption has been made. If the company does not redeem in the first three months, any organization of the preferred stockholders, comprising at least 30 per cent of the outstanding preferred stock, may redeem; *Provided and upon condition* that such organization shall not exclude any preferred stockholder, but that within a reasonable length of time, all preferred stockholders may come into the same upon an equal footing; And Provided Further that the right of redemption herein provided for is intended primarily for the protection of the preferred stockholders and all of

them, and for their benefit, and is granted upon the condition and with the reservation that it shall not be assigned, transferred or encumbered without the consent of this Court first obtained and without such consent any attempted assignment, transfer or encumbrance will be void.

Upon approval by the court of the sale, the receiver shall, upon order of the court, execute to the purchaser a certificate of sale with appropriate recitals of the conditions hereof, relative to the redemption, and at the expiration of the period of redemption, if no redemption shall have been made, the purchaser, or in case of redemption, the redemptioner, shall be entitled to appropriate instruments of conveyance to be made either by the receiver or a special master to be appointed for that purpose, all pursuant to the further orders of the court, and if the property be not redeemed by the company it will be required to execute and deliver confirmatory conveyances. [135]

Until such conveyances are executed, the property shall remain or be deemed to be in the possession and subject to the supervision of the Court.

Proceeds of Sale:

The proceeds of the sale paid to the receiver or into court from time to time shall be kept and distributed in the manner and to the persons and upon the conditions hereinafter to be ordered and prescribed by appropriate orders made from time to time as the need may arise.

Description of Property:

The following is a description of the property to be sold:

(a) Those certain lots, parcels and pieces of land situate in the County of Jefferson, State of Idaho, particularly described as follows: Southwest (SW.) Corner of Section eight (8), Township four (4), North Range Thirty-nine (39) East of the Boise Meridian, running thence East Eighty-three (83) rods, thence North Eighty (80) rods, thence East Seventy-seven (77) rods, thence North Sixty-three (63) rods, more or less, to the Parks and Lewisville Canal, thence along the said canal to the west line of said Section eight (8); thence South One Hundred Twenty-seven (127) rods to the place of beginning, but subject to that certain right-of-way of the Oregon Short Line Railroad Company One Hundred (100) feet wide, running diagonally across the above described land in a Northeasterly and Southwesterly direction, together with all buildings, structures, residences, beet sheds and other improvements upon said premises, and all canals, ditches and water rights appurtenant thereto, or used in connection therewith, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

(b) Also all machinery, equipment, supplies and other personal property of every kind or nature owned by the defendant Beet Growers Sugar Company, and now in the posses-

sion of the receiver, which has heretofore been used in connection with the operation of the sugar factory on the premises hereinbefore described, including, but not limited to, four (4) shares of the capital stock of the Rigby Canal Company, and Nine (9) shares of the capital stock of the Lewisville Canal Company, representing rights to the use of water for the irrigation of the land hereinbefore described or the operation of the sugar factory situate thereon; one (1) steel traveling crane for distributing beets, one (1) miscellaneous lot of laboratory and electrical supplies, bolts, nuts, washers, screws, rivets, cotter keys, packing, storeroom supplies, pipe and pipe fittings, tools, oils, greases, automobile and truck supplies and parts; four (4) typewriter desks, four (4) oak typewriter desks, two (2) Underwood typewriters, one (1) L. C. Smith typewriter, one (1) Royal typewriter, four (4) oak roll top desks, three (3) oak Cutler desks, three (3) oak flat top desks, two (2) standing desks, [136] two (2) small oak tables, eight (8) oak swivel chairs, six (6) oak arm chairs, five (5) straight back chairs, six (6) oak arm chairs, one (1) small swivel stool, one (1) stationary stool, two (2) safes, three (3) adding machines, one (1) check protector, two (2) electric fans, four (4) section filing units, one (1) Hotchkiss punch No. 1, one (1) Hotchkiss punch, No. 2, one (1) cupboard, one (1) index file, one (1) steel cabinet, one (1) Tagliabue Registering

thermometer, one (1) surveying outfit, consisting of transit, tripod, rods, chains, etc., eight (8) wire paper baskets, five (5) brass cuspidors, one (1) nickel cuspidor, one (1) hall tree, twelve (12) wire trays, six (6) duplex automobile trucks, one (1) Quad automobile truck, six (6) Troy Trailers, four (4) Cultipackers, four (4) dump wagons, one (1) Ford coupes, Forty-two (42) small Tare scales, forty-six (46) beet drills, six (6) sprayers, four (4) beet wagons, four (4) Featherstone beet loaders, two (2) John Deere beet loaders, thirty-five (35) wagon scales, six (6) High Line dumps, located respectively at the Ball Ranch, Lewisville and Lufkin in Jefferson County, at Thornton and Winder in Madison County, and at Wilford in Fremont County, Idaho.

(c) Also all right, title and interest of the defendant Beet Growers Sugar Company and of the receiver thereof in and under that certain lease of the property hereinbefore described, bearing date September 13, 1923, executed by A. V. Scott as receiver, in favor of E. D. Hashimoto, Treasurer, and in and under such further lease of said premises and personal property as the receiver may enter into in behalf of the defendant Beet Growers Sugar Company, during the further progress of this suit; Provided that the purchaser shall not be entitled to receive any rentals under said first named lease, due or to become due to the receiver.

Dated: Boise, Idaho, January 25th, 1924.

FRANK S. DIETRICH,
District Judge. [137]

"Bonds in hands of claimants 337,345.35." [138]

[Title of Court and Cause.]

SUPPLEMENTAL ORDER OF SALE.

The property directed to be sold by the order of January 25th, 1924, having now been leased by the receiver to the Utah-Idaho Sugar Company for the season of 1924:

To the end that there may be no misunderstanding by intending purchasers of references in said order of sale to the possible lease for the current season, IT IS DECLARED AND FURTHER ORDERED that the purchaser shall succeed to the rights of the Receiver as lessor in said lease as of the date of the Receiver's sale, and shall be entitled to receive the payments of rental under said lease thereafter to become due, but shall acquire no interest in or right to the initial payment of $25,000.00 made to the Receiver at the time of the execution of the lease; and

IT IS FURTHER DECLARED AND ORDERED that in case of redemption, the redemptioner and not the purchaser at the sale shall be entitled to the rentals which are to be paid by the lessee subsequent to the date of sale, and unless otherwise ordered by the Court the property sold shall be deemed to be in the possession and under

the control of the Court until the period of redemption shall have expired and instruments of transfer executed to the purchaser or the redemptioner, [139] and in case of payment by the lessee of any installment of rent after the date of sale, it shall be paid to the Receiver or a Special Master appointed for that purpose, same to be held in trust for the purchaser, or in case of redemption for the redemptioner, and to be paid over at the time the instruments of transfer are executed and delivered.

The receiver is directed to call the attention of bidders to this supplemental order and to such lease on the day of sale, and is also directed to append to the notice of sale which is now in the course of publication, the following:

Contemplating bidders are hereby notified of a lease by the undersigned Receiver to the Utah-Idaho Sugar Company for the 1924 season of the property to be sold, and of a supplemental order defining and limiting the rights of purchasers therein, said lease being dated February 6th, 1924, and the order being dated February 7th, 1924.

A. V. SCOTT,
Receiver.

Dated Boise, February 7th, 1924.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: U. S. District Court, District of Idaho. Filed Feb. 7, 1924. W. D. McReynolds, Clerk. By M. Franklin, Deputy. [140]

[Title of Court and Cause.]

OBJECTIONS TO PROPOSED DECREE IN THE ABOVE-ENTITLED ACTION AS THE SAME HAS BEEN PREPARED FOR PLAINTIFF WHICH ARE MADE BY THE DEFENDANT BEET GROWERS SUGAR COMPANY.

I.

In paragraph 2, the rate of interest should be corrected from 8 per cent, and to read "7 per cent."

II.

Strike out all of paragraph 6, for the reason that heretofore the charter of the Beet Growers Sugar Company was reinstated and the annual tax paid as required by law, and certificates of reinstatement issued by the proper authorities. If this is not true then it was incumbent upon the plaintiff herein to have the directors of the corporation made parties defendant and as trustee for the defunct corporation in order that proper judgment could be entered herein.

III.

The language embraced in the concluding portion of paragraph 7, beginning on line 31 of page 7, to the conclusion of said paragraph should be eliminated and be made to read as follows: [141]

> "That any party to this suit or any other person who may bid for or purchase the property at said sale, and further that the property so advertised to be sold, may be inspected by

intending bidders prior to such sale, subject to such reasonable requirements as the said Receiver may prescribe."

The language of the proposed decree apparently limits those who may become purchasers at said sale.

IV.

Paragraph No. 9 should be amended so as to permit the plaintiff to apply on any bid it should make the amount found to be due upon the bonds, but enough cash shall be paid to the Master to pay all costs of sale and Receiver's certificates less the amount that is due the Receiver, that will become due upon the lease from the said premises, and under no circumstances should the preferred shares of stock be permitted to be received as a part of the purchase price of said property, for after the payment of the amount found to be due upon the bonds and the unsecured claims, any amount thereafter of necessity must go to the Company for proper distribution.

V.

We object to paragraph 10, as drawn, and insist that if the Court should fix an upset price, that the same should be done before the signing of the decree, and should be included in the signing therein and paragraph 10 should be drawn in conformity to this suggestion.

VI.

We object to paragraph 12 as drawn. There should be a provision in line 19 on page 10, after the word "thereof" as follows: "After the bid of re-

demption has expired'' and provisions should be made in said paragraph, ''That if the Court should make a new lease for the year 1924 which will extend into the year 1925, that the purchasers shall not be let into the possession thereof until the expiration of said lease.'' We also object to the following language, the same being the [142] concluding portion of paragraph 12: ''And that for the purpose of exercising such statutory rights of redemption, if they elect so to do, the unsecured creditors of the defendant Beet Growers Sugar Company whose claims have been or may hereafter be adjudicated or allowed in this suit shall be regarded as and shall enjoy the status of judgment creditors of said defendant.''

VII.

We object to subdivisions 5 and 6 of paragraph 13 as drawn for the reason that the judgment creditors, Thomas George and the Idaho Farm Loan Company, and the First National Bank of Logan should be placed upon an equality with the unsecured creditors. We also object to all of subdivision 7 of said paragraph 13 for the reason that any money due, after paying the creditors, should be paid to the Beet Growers Sugar Company and would be subject to the order of distribution by said Company.

VIII.

We object to paragraph 14 and its entirety. The same should be eliminated from the decree.

IX.

Paragraph 15 should provide that if this Court ject to the order or distribution by said Company.

1924 and part of the year 1925, that the purchasers would not be let into possession until the expiration of such lease.

X.

In paragraph 16 in line 30 on page 14, the word "land" should be changed to "property."

XI.

The total of the figures as given in paragraph 4 does not appear to be correct and we suggest that these figures should be rechecked and that upon the various secured claims that there should be an uniform rate of interest fixed at 7 per cent, for the reason that that is the amount of interest the bonds draw [143] and the claims themselves ought not draw any more interest than the security provides for. The amount of the Gabby claim as verified by the company's figures are in accordance with the statement attached hereto.

XII.

The defendant Beet Growers Sugar Company earnestly objects to the inclusion in the decree of any provisions whatever that gives the preferred stockholders the right of redemption. This right of redemption should, in the judgment of the defendants, be given to the Beet Growers Sugar Company so that it can redeem for and on behalf of all of the stockholders.

The defendants, therefore, respectfully present the above objections and proposed amendments .

MARIONEAUX, KING & SCHULDER,

Attorneys for Beet Growers Sugar Company, a Corporation.

Dated this 15th day of January, 1924. [144]

[Title of Court and Cause.]

OBJECTIONS OF BEET GROWERS SUGAR COMPANY TO PROPOSED ORDER FOR SALE BY RECEIVER.

Now comes the Beet Growers Sugar Company, the defendant above named, and objects to the proposed order of sale of defendant's property by the Receiver in the above-entitled proceeding.

I.

The said defendant objects to that portion of the proposed order of sale by the Receiver which provides that said property shall first be offered for sale with a right of redemption, and in the event there shall not be received a bid of at least $650,000 for said property, subject to the right of redemption, that the sale then be adjourned for one day and the property offered for sale without redemption at not less than $750,000.

This defendant urges as grounds for said objection all the reasons and grounds heretofore stated and submitted to the Court against the sale of its property without the right of redemption, and in addition thereto submits that if an order of sale shall be entered herein directing its property to be sold subject to a right of redemption, coupled with an order directing its sale without a right of redemption, in the event a bid of $650,000 shall not be obtained upon an offer of the sale subject to the right of redemption, it is apparent that such an order of sale will tend to deter persons from bidding for said property when first offered for sale subject

to redemption and to withhold their bids in the hope that the sale will be adjourned and on the following day the property [146] offered for sale without the right of redemption.

II.

This defendant objects to any order of sale of its property, except subject to the right of redemption, and reserving all of its objections to an order of sale except subject to redemption, specifically objects to the diminution of the time of redemption from that provided by the laws of the State of Idaho to a period of six months, and to the diminution of the time within which this defendant may redeem its said property from sale, to a period of three months.

In pressing the objection just stated, this defendant calls attention to the fact that all parties to this proceeding at the last hearing before the Court, withdrew any objections which had theretofore been urged against the sale of the property subject to redemption. Further, that the Court has directed that the Receiver accept bids for a lease of the property for the coming season, and in the event a lease shall be granted the property would thereby be withdrawn from operation during the coming season by any purchaser, for which reason there is no sufficient ground for shortening the time of the period of redemption, and particularly for shortening the time to three months, within which this defendant has the right to make such redemption.

This defendant further represents that with the property leased for the coming season, such lease furnishes sufficient grounds in equity for the Court

to direct the sale of the property subject to the right of redemption and subsequent approval of the Court, eliminating from the order of sale the alternative order directing the sale of the property without redemption, in the event a sufficient bid cannot be obtained for the property upon its sale subject to the right of redemption, for the reason that the Court may, by directing the property to be sold subject to the right of redemption, thereafter enter an order directing the sale of the property without the right of redemption in case it shall be found that the property cannot be sold for a sufficient sum when offered subject to redemption. The property could be advertised and offered for sale subject to redemption and a report made to the Court of the result of such offer, leaving ample time during the period of the lease to reoffer the property for sale without redemption, in case a sufficient [147] bid should not be received at the offering of the property for sale subject to redemption. In this manner the rights of all parties could be conserved and protected, whereas the entry of an order such as is now proposed would tend to curtail the rights of this defendant as a redemptioner.

This defendant further represents that the period of three months within which under said proposed order of sale it shall have the right to redeem said property, is entirely too short a period, particularly in view of the fact that the property is to be leased during the coming season, and that if it shall be granted a longer period of time it will be able to secure the necessary funds with which to discharge

all the indebtedness now existing against its said property and thereby re-establish itself, thus enabling it to pay in full all of its creditors and hold and operate its property for the benefit of its stockholders, both preferred and common.

Respectfully submitted,
MARIONEAUX, KING & SCHULDER,
MARSHALL, McMILLAN & CROW,
H. H. HENDERSON,
Attorneys for Beet Growers Sugar Company.

[Endorsed]: U. S. District Court, District of Idaho. Filed Jan. 24, 1924. W. D. McReynolds, Clerk. By M. Franklin, Deputy. [148]

"Copy of lease executed to Utah-Idaho Sugar Company for year beginning August 1, 1922, to March 1, 1925, amount paid for lease $115,000." [149—156]

[Title of Court and Cause.]

PETITION AND OBJECTIONS.

Now comes the Beet Growers Sugar Company, one of the defendants above named, and hereby respectfully represents to this honorable Court, and petitions as follows:

I.

That heretofore and on or about the 25th day of January, 1924, this Honorable Court entered its order herein, authorizing the Receiver of this petitioner to sell at public sale all of its property, both real, personal and mixed, and principally its beet

sugar factory at and near Rigby, Idaho, with all of its appurtenances and all property used in connection therewith, and thereafter on the 7th day of February, 1924, this Honorable Court filed and entered a supplemental order of sale in respect to said property, and the conditions under which the same shall be sold.

II.

That since the filing of the order of sale on the 25th day of January, 1924, the property of the defendant company, so ordered to be sold, has been by order of this Court leased to the Utah-Idaho Sugar Company, at a fixed rental for the year [157] 1924, of $115,000.00, and $25,000.00 of said amount has heretofore been paid by said Utah-Idaho Sugar Company to the Receiver, and the balance of said payment has been secured by a good and sufficient surety bond; that it was set forth in the first paragraph of the order authorizing the Receiver's sale; that the net indebtedness of the Receiver will aggregate approximately $67,000.00, it being stated by said order that there are no funds available with which to pay said amount, but your petitioner alleges that by the payment of the $25,000.00 by the Utah-Idaho Sugar Company, said amount of indebtedness has been reduced in the sum of $25,000.00, or to approximately $42,000.00, with $90,000.00 additional to be paid during the year ending March 1, 1925; that said $90,000.00 will pay the taxes for 1923, amounting to $12,810.00, together with the interest, penalties and costs thereon, and will still leave a balance of approximately $75,000.00 with which to pay interest

on the secured indebtedness outstanding against this petitioner.

III.

That according to the recital in paragraph 3 of the order authorizing said Receiver's sale, it appears that there is a total of secured indebtedness outstanding in the sum of $337,345.33; that figuring the interest on said amount of secured indebtedness at 7 per cent for the year 1924, it would aggregate the sum of $23,614.17, and deducting this amount from the approximate sum of $75,000.00 above referred to, the Receiver will still have on hand more than $50,000.00 with which to pay Receiver's expenses, other accruing taxes and to apply on the outstanding Receiver's certificates.

IV.

That according to the report of A. V. Scott, Receiver, and E. J. Broberg, special auditor, the unsecured claims approved less proper deductions amount to the sum of $147,574; that according to said report so filed the total amount of indebtedness [158] except Receiver's compensation from January 1, 1924, and legal fees amount to $623,239.00, of this amount, however, there are unsecured claims not filed, and which claims are questioned by this petitioner in the sum of $6,428.00, and claims filed but not approved in the sum of $13,407.00, liabilities on these claims being denied. These two items amount to $19,435.00, which should be deducted from the report filed by the Receiver and auditor, and deducting said amount it would leave as shown by said report, but the sum of $603,404.00 as a total

liability of the company. From this amount is now to be deducted, or at least to be taken into account, the sum of $115,000.00 to be received for rental for the property, and deducting this amount from the total indebtedness would leave at this time approximately the sum of $488,000.00 indebtedness to which would have to be added the accruing interest, the balance of the Receiver's charges and attorney's fees, or a total indebtedness under any circumstances of not to exceed $560,000.00 at the end of the rental season.

V.

That if said property belonging to the petitioner is not sold at the present time, but should be retained in the hands of the Receiver until March 1, 1925, the company would be in a better condition financially than at the present time and no damage or loss by reason of such delay would occur to said company or to its creditors.

VI.

Your petitioner therefore respectfully represents that it is not necessary at this time to sell all or any part of the property of this petitioner to pay its said indebtedness. Petitioner admits that if said property is to be sold, it should be sold as a single operating unit and in one parcel, but in view of its present financial condition, petitioner respectfully represents that there is no immediate necessity for the sale [159] of said property or any part thereof.

VII.

Your petitioner directs attention to that portion

of the order of the Court wherein the Court specifies the property of this petitioner to be sold, and wherein it is stated that "all of the property, real, personal and mixed owned by the Beet Growers Sugar Company" shall be sold. Your petitioner respectfully represents that the only property belonging to said company which should in any event be sold should be limited to its property situate within the State of Idaho, and should not embrace any claims, demands or choses in action which said company and your petitioner may have pending and against individuals or companies without the State of Idaho; that any such claims would not be within the jurisdiction of the Court or under the control of the Receiver and are not covered by a mortgage securing the bonded indebtedness of the company or pledged as security to any of its creditors.

VIII.

Your petitioner further respectfully represents that in the event said property is sold, that the order of the Court should be modified in respect to the payment to be made for said property by the purchaser, and especially in the following particulars; that the payment should be made in cash to the Receiver, and the Receiver should not be authorized to accept in payment for said property, outstanding bonds or collateral of any kind held by the creditors of said company; that the Receiver should be required, out of the money so received, to settle and adjust in cash all proper and legal claims as the same shall have been fixed and determined by this Court, and not permit or allow the proposed pur-

chaser to speculate upon the company's securities or obligations outstanding. In other words, if any benefits are to be received [160] or made by said sale, it should operate for the benefit of the stockholders of the company and not for the purchaser of the property belonging to the company.

IX.

Your petitioner respectfully represents that at the time this Honorable Court authorized the sale of said property and directed the Receiver not to accept a bid for less than $650,000.00, the property of the sugar factory of the company situate at Rigby, Idaho, had not been leased for the 1924 season; that after the ordering of said sale and on the 6th day of February, 1924, the Receiver executed a lease, with the approval of this Court, to the Utah-Idaho Sugar Company, by which said lease, said company will receive before March 2, 1925, the sum of $115,000.00; said rental value thereby fixing a value of the sugar factory and holdings of the company at more than $1,150,000.00, and after paying taxes and other expenses would pay more than 8 per cent on a valuation of $1,150,000.00, which said valuation is a very reasonable valuation for said property; that this Honorable Court by fixing a price of $650,000.00 as a minimum bid to be received, has in effect conveyed to prospective purchasers the idea that said property could be purchased for approximately that sum, all of which is greatly to the disadvantage of the stockholders of the company and of its creditors.

X.

Your petitioner further represents that if said property is sold on the Receiver's sale on the 1st day of March, 1924, that the stockholders and creditors of petitioner will be greatly damaged and injured by said sale, and will be deprived of an opportunity to sell said property at a much higher figure than can be received at a sale on said date; that your petitioner now has negotiations pending looking to the sale of said property with one company at a price aggregating [161] $1,135,000.00, and other parties are negotiating and have heretofore submitted a proposition on the bases of $925,000.00; that your petitioner has conferred with still other people looking to a refund of the company's indebtedness, and now has negotiations pending by which, in the judgment of your petitioner, it should be able to refund, as deemed for the best interest of the company, all of the indebtedness of the company and leave the company in possession of its property as a going concern and with funds sufficient to carry on its business, in which event, in the judgment of your petitioner, the property and business of the company as a going concern is worth to the stockholders at least $1,500,000.00; that if said property is forced to sale at this time, it will hamper and prevent the negotiations now pending looking to a sale of said property or a refund of its indebtedness.

XI.

That if, in the opinion of this Honorable Court, a sale of said property should become necessary in

order to fully protect the creditors and stockholders of the company, that no damage, loss or injury, under any circumstances could be sustained by the postponement of the said sale until to and including the 1st day of July, A. D. 1924; that if a sale is ordered for that time, in event the property is not sold by your petitioner before said date or its indebtedness is not refunded before said time, there will still be six months time within which to sell said property and allow a redemption therefor before the beginning of the 1925 season; that by the postponement of said sale to said date, it will enable your petitioner to carry on successfully the negotiations now pending and upon which it has been earnestly working since the amount of the indebtedness of your petitioner was fixed and determined by the decree of this Court heretofore entered. [162]

XII.

That it is necessary for petitioner, in order to consummate the sale of the property now pending, to call a stockholders meeting and to secure the approval of the stockholders both preferred and common, in order to consummate said deal; that a large number of the stockholders of the company reside in Japan, and it takes approximately thirty days to get communications to them, and to receive a reply; that it is necessary to get necessary, proper and legal notices in order to transact the business necessary to be done in effecting said sale in a proper and legal way and time is required for said purposes; that if said property is now sold at

a forced sale and should bring the amount suggested in the order of the Court, it would then greatly embarrass and entirely prevent your petitioner from selling the property upon a basis that will properly protect the stockholders of the Company; that delay in the time of said sale will greatly benefit your petitioner, stockholders and creditors, and will in no manner embarrass the Receiver.

WHEREFORE, your petitioner prays:

1. That an order of this Court extending the time of the Receiver's sale of said property to and including the 1st day of July, A. D. 1924, and that the Court fix a proper period for redemption thereafter.

2. That the Court immediately order the sale heretofore advertised for 12 o'clock noon, March 1, 1924, postponed.

3. That such other and further order as is meet and equitable in the premises.

MARIONEAUX, KING & SCHULDER,
Attorneys for Beet Growers Sugar Company,
Defendants Herein.

[Duly verified.]

[Endorsed]: U. S. District Court, District of Idaho. Filed Mar. 1, 1924. W. D. McReynolds, Clerk. [163]

[Title of Court and Cause.]

ORDER OF COURT RE POSTPONEMENT OF SALE.

Upon petition of the defendant Beet Growers Sugar Company,

IT IS ORDERED, that unless, in view of his more intimate knowledge of conditions upon the ground he thinks it would be perilous to postpone the sale, the Receiver postpone the sale set for to-day for nineteen (19) days, namely, until Thursday the 20th day of March, 1924, at 12:00 o'clock M., and that he give notice of such postponement by announcement at the place and time of sale to-day, and by further brief notices in the newspapers in which the original notice has been published; and

IT IS FURTHER ORDERED, that a hearing be had in the courtroom at Pocatello, Idaho, at 9:30 on the morning of March 11th, 1924, upon the said defendant's petition for further postponement of said sale, of which hearing the defendant is directed to give all parties of record to the suit notice without unnecessary delay.

Dated: Boise, Idaho, March 1st, 1924.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: U. S. District Court, District of Idaho. Filed Mar. 1, 1924. W. D. McReynolds, Clerk. [164]

[Title of Court and Cause.]

ORDER FIXING TIME FOR HEARING APPLICATION TO APPROVE SALE.

The Receiver having presented his return of sale of beet sugar plant at Rigby, pursuant to orders heretofore made,

IT IS ORDERED, that a hearing upon said return, and the matter of confirming said sale, be set for Friday, March 14th, at 2:00 o'clock P. M., in the courtroom at Pocatello, Idaho.

Dated: Boise, March 4th, 1924.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: U. S. District Court, District of Idaho. Filed Mar. 4, 1924. W. D. McReynolds, Clerk. [165]

[Title of Court and Cause.]

PETITION AND OBJECTIONS FILED BY DEFENDANT BEET GROWERS SUGAR COMPANY TO REPORT OF RECEIVER ASKING CONFIRMATION OF SALE OF PROPERTY.

Now comes the Beet Growers Sugar Company, one of the defendants above named, and hereby respectfully represents to this Honorable Court and petitions as follows:

I.

That heretofore and on or about the 25th day of January, 1924, this Honorable Court entered its order herein, authorizing the Receiver of this petitioner to sell at public sale all of its property, both real, personal and mixed, and principally its beet sugar factory at and near Rigby, Idaho, with all of its appurtenances and all property used in connection therewith, and thereafter on the 7th day of

February, 1924, this Honorable Court filed and entered a supplemental order of sale in respect to said property, and the conditions under which the same shall be sold.

II.

That since the filing of the order of sale on the 25th day of January, 1924, the property of the defendant company, so ordered to be sold, has been by order of this Court leased to the Utah-Idaho Sugar Company, at a fixed rental, for the year [165½] 1924 of $115,000.00, and $25,000.00 of said amount has heretofore been paid by said Utah-Idaho Sugar Company to the Receiver and the balance of said payment has been secured by a good and sufficient surety bond; that it was set forth in the first paragraph of the order authorizing the Receiver's sale; that the net indebtedness of the Receiver will aggregate approximately $67,000.00, it being stated by said order that there are no funds available with which to pay said amount, but your petitioner alleges that by the payment of the $25,000.00 by the Utah-Idaho Sugar Company, said amount of indebtedness has been reduced in the sum of $25,000.00, or to approximately $42,000.00, with $90,000.00 additional to be paid during the year ending March 1, 1925; that said $90,000.00 will pay the taxes for 1923, amounting to $12,810.00, together with the interest, penalties and costs thereon, and will still leave a balance of approximately $75,000.00 with which to pay interest on the secured indebtedness outstanding against this petitioner.

III.

That according to the recital in paragraph 3 of the order authorizing said Receiver's sale, it appears that there is a total of secured indebtedness outstanding in the sum of $337,345.33; that figuring the interest on said amount of secured indebtedness at 7 per cent for the year 1924, it would aggregate the sum of $23,614.17, and deducting this amount from the approximate sum of $75,000.00 above referred to, the Receiver will still have on hand more than $50,000.00 with which to pay Receiver's expenses, other accruing taxes and to apply on the outstanding Receiver's certificates.

IV.

That according to the report of A. V. Scott, Receiver, and E. J. Broberg, special auditor, the unsecured claims approved, less proper deductions, amount to the sum of $147,574.00; that according to said report so filed, the total amount of indebtedness, [166] except Receiver's compensation from January 1, 1924, and legal fees amount to $623,-239.00, of this amount, however, there are unsecured claims not filed, and which claims are questioned by this petitioner in the sum of $6,428.00, and claims filed but not approved in the sum of $13,407.00, liabilities on these claims being denied. These two items amount to $19,435.00, which should be deducted from the report filed by the Receiver and auditor, and deducting said amount it would leave as shown by said report but the sum of $603,404.00 as a total liability of the company. From this amount is now to be deducted. or at least to be

taken into account, the sum of $115,000.00, to be received for rental for the property, and deducting this amount from the total indebtedness would leave at this time approximately the sum of $488,-000.00 indebtedness, to which would have to be added the accruing interest, the balance of the Receiver's charges and attorney's fees, or a total indebtedness under any circumstances of not to exceed $560,000.00 at the end of the rental season.

V.

That if said property belonging to the petitioner be retained in the hands of the Receiver until March 1, 1925, the company would be in a better condition financially than at the present time, and no damage or loss by reason of such delay would occur to said Company or to its creditors.

VI.

That heretofore and on the 1st day of March, 1924, your petitioner filed its petition herein, in which said petition an order was requested extending the time of the receiver's sale to and including the 1st day of July, 1924, and that the court fix a proper period of redemption thereafter, and that the court order that the sale advertised for 12 o'clock noon March 1st, 1924, be postponed, and that the court make such [167] other and further order as is meet and equitable in the premises; that upon the presentation of said petition, this Honorable Court made and entered the following order:

"IT IS ORDERED, that unless, in view of his more intimate knowledge of conditions

upon the ground he thinks it would be perilous to postpone the sale, the receiver postpone the sale set for to-day for nineteen (19) days, namely until Thursday the 20th day of March, 1924, at 12 o'clock M., and that he give notice of such postponement by announcement at the place and time of sale to-day, and by further brief notices in the newspapers in which the original notice has been published; and

IT IS FURTHER ORDERED, that a hearing be had in the courtroom at Pocatello, Idaho, at 9:30 on the morning of March 11th, 1924, upon the said defendant's petition for further postponement of said sale, of which hearing the defendant is directed to give all parties of record to the suit notice without unnecessary delay."

Dated: Boise, Idaho, March 1, 1924.

VII.

That the making and entering of said order was communicated to the receiver herein before the hour of 12 o'clock noon on the 1st day of March, 1924, but as your petitioner is informed and verily believes and therefore states the fact to be, said receiver failed to postpone said sale, and on said date and at the hour fixed therefor, the property so advertised for sale, was by said receiver offered for sale and was bid in by the Utah Idaho Sugar Company, a corporation, for the sum of $800,000.00; and thereafter said receiver presented his return of sale of said property to this Honorable Court,

and on March 4, 1924, the Court made and entered the following order:

> "The receiver having presented his return of sale of the beet sugar plant at Rigby, pursuant to orders heretofore made,
>
> IT IS ORDERED that a hearing upon said return and the matter of confirming said sale be set for Friday, March 14th at 2 o'clock P. M. in the courtroom at Pocatello, Idaho."

VIII.

Your petitioner hereby respectfully objects to the confirmation [168] of said sale, and for the following reasons, to wit:

(a) That at the time this Honorable Court entered its order authorizing the sale of said property, and directed the receiver not to accept a bid therefor for less than $650,000.00 the property of petitioner had not been leased for the 1924 season; that after the ordering of said sale, and on the 6th day of February, 1924, the receiver executed a lease, with the approval of this court, to the Utah Idaho Sugar Company, by which said lease said company will receive before March 2, 1925, the sum of $115,000.00; said rental value thereby fixing the value of the sugar factory and the holdings of the company at more than $1,150,000.00, and after paying taxes and other expenses, will pay more than eight per cent on a valuation of $1,150,000.00, which said valuation is a very reasonable one for said property; that with the sugar factory owned by your petitioner, in full operation, and as a going concern, it is reasonably worth to the stockholders the

sum of $1,500,000.00; that at the time of said sale, to wit, on March 1st, 1924, and at the present time, petitioner has negotiations pending which, in the judgment of your petitioner, would enable it to sell said property for a sum largely in excess of $1,-150,000.00, or to be able to refund all of its outstanding indebtedness, and leave the company in the possession of its property as a going concern and with funds on hand sufficient to carry on its business, in which event the stockholders of your petitioner would be protected in their investment, and greatly benefited thereby.

(b) That the amount of $800,000.00 bid by the Utah Idaho Sugar Company for said property, is an amount far less than the reasonable market value of said property, and a confirmation of said sale and the actual sale of said property for said amount would be greatly to the disadvantage of the stockholders [169] of petitioner and would occasion them serious loss, they, by said action losing approximately ninety per cent of their original investment.

(c) That your petitioner verily believes that the bid received by the Receiver, and in the sum of $800,000.00, should not by this Court be confirmed, but that the court should in the interest of the stockholders of petitioner, authorize and direct the receiver to resell said property at a date not earlier than July 1st, 1924, and to give the necessary and proper notice of said sale; that in the judgment of petitioner a resale of said property would enable petitioner to negotiate the sale of said property

upon a basis greatly to the advantage of the stockholders of petitioner, and would enable them to receive a sum of at least $350,000.00 above the amount bid at the Receiver's sale on March 1st, 1924.

(d) That petitioner now has negotiations pending not only for the sale of the property, but also negotiations looking to a refund of the company's indebtedness, which, if accomplished, will obviate the necessity of a sale of said property, but will leave said property in the hands of said petitioner and under such conditions that its sugar factory could be operated as a going concern, thereby enabling it to protect not only its creditors, but each and all of its stockholders.

(e) That the ordering of a resale of said property and the postponement of the date of said sale to and including July 1, 1924, would in no manner jeopardize the standing of the creditors of the corporation, and would not in any manner impair or diminish the property of the corporation pledged as security for the outstanding bonds of petitioner secured thereby, and the outstanding receiver's certificates, and would not prevent a reasonable period of time for redemption in the [170] event of said property being sold on said date before the beginning of the 1925 beet season campaign.

(f) That by the terms of the order of sale heretofore entered herein, the petitioner is only given the exclusive right to redeem from said sale for a period of three months, and that thereafter, for an additional period of three months, if no redemption

has been made by the company, any organization of preferred stockholders, comprising at least thirty per cent of the outstanding stock may redeem; that by the terms of said order, it is uncertain and indefinite when the period of redemption shall begin to run, the inference from the terms thereof, however, being that the period of redemption will begin to run from the date of the confirmation of said sale, notwithstanding the proposed purchaser would have ninety days thereafter in which to pay for said property, and your petitioner therefore alleges that it would not know and would have no means of knowing whether or not the purchaser would pay the final payments required under its bid, or whether it would endeavor to fully comply with the terms and conditions of said order of sale, thereby leaving your petitioner in a position where its debts have not been fully paid or discharged or the existing mortgage upon said property cancelled, all of which would greatly prejudice and interfere with the refinancing of petitioner and also with the securing of the necessary and proper funds with which to pay its indebtedness, or to redeem said property from said sale; that if this Honorable Court, upon the hearing of this petition should order the aforesaid sale confirmed, then the order of confirmation should provide that your petitioner should have the full period of redemption allowed by law, and after the final payment of the purchase price so bid shall have been made; that any right of redemption ordered by the Court would be of no benefit to petitioner unless said right of redemption

can be exercised after the final payment shall have been made for said property. [171]

IX.

Your petitioner further alleges that under and by virtue of the order of this Court, directing the Receiver to sell the property of petitioner, it was provided that "any competent person or corporation may become the purchaser at such sale"; that your petitioner is informed and verily believes and therefore states the fact to be that the Utah Idaho Sugar Company, a corporation, its officers and agents, were the only bidders at said sale, and that the Receiver sold said property, subject to the confirmation of this Court, to the Utah Idaho Sugar Company. And petitioner further alleges that said Utah Idaho Sugar Company is not a competent corporation, or one having the right to become a bidder or purchaser at said sale, and is not entitled to purchase said property or any part thereof at Receiver's sale; that heretofore a certain action was instituted and commenced by the Federal Trade Commission of the United States of America against the Utah Idaho Sugar Company and other defendants, which said action has docket number 303, said proceedings being under Section 5 of the Act of September 26, 1924, known as the Federal Trade Commission Act and passed by the Congress of the United States. The Federal Trade Commission having issued and served its complaint herein, the Utah Idaho Sugar Company filed its answer in said proceedings, admitting certain of the allegations of said complaint and denying certain others

thereof; that thereafter, hearings were had before said commission, testimony was taken, arguments made, and thereafter, Findings of Fact and Conclusions were duly rendered, made and entered by the said Federal Trade Commission, on the 3d day of October, 1923, and on said date a judgment and restraining order was issued in said proceeding against the Utah Idaho Sugar Company and other defendants therein, by the terms of which said judgment and restraining order, the said Utah Idaho Sugar Company, and [171–a] others, were ordered to forever cease and desist from doing and performing certain acts and things specifically set forth in said judgment, and particularly commanding the said Utah Idaho Sugar Company and the other defendants, to cease and desist from conspiring or combining between and among themselves to maintain certain monopolies and to prevent the establishment of beet sugar enterprises and the building of beet sugar factories by persons and interests other than said corporation respondents, and to cease and desist from hindering, forestalling, obstructing or preventing competitors or prospective competitors from engaging in the purchase of sugar beets and in the manufacture and sale of refined beet sugar in interstate commerce, and from effectuating or attempting to effectuate such conspiracy or combination; and by said judgment and restraining order the said Utah Idaho Sugar Company was commanded to cease and desist from using its financial power and influence for preventing or interfering with the establish-

ment of independent, competing sugar companies or organizations or from doing any act or thing that in any manner would interfere with the proper financing of such organizations or from conducting or operating their business, or from engaging in the beet sugar business; that a copy of said Findings of Fact and Conclusions and judgment and restraining order is hereunto attached and made a part of this petition and marked Exhibit "A"; that by virtue of the terms of said Findings, Conclusions and Judgment, the Utah Idaho Sugar Company is not a competent or proper corporation to bid for the property of your petitioner or to become the purchaser thereof at a forced sale; that the said Utah Idaho Sugar Company has no right, power or authority to under any circumstances purchase said property or to negotiate therefor, without being in violation of the Findings, Conclusions and Judgment hereinbefore [172] referred to, except the same was done by the free and voluntary act of petitioner and its stockholders; that the sale of said property under the order of the Court was a forced sale and against the objection and protest of this petitioner and any confirmation of said sale at this time by this Honorable Court, would be without the consent and against the solemn protest of petitioner and its stockholders.

X.

That it was found and determined by the Federal Trade Commission that petitioner was organized as an independent enterprise for the purpose of

erecting a sugar beet factory, and of engaging in the purchase of sugar beets, and the manufacture and sale of beet sugar in interstate commerce, and that shortly after the incorporation of petitioner, the Utah-Idaho Sugar Company and others undertook to prevent sugar operations of petitioner as an independent concern, and undertook to prevent the erection of its factory by making false, unfair and misleading statements to farmers with whom contracts had been made for the furnishing of beets, and to its stockholders to the effect that the company would not be able to get beet seed to supply to contracting farmers, nor to get the necessary machinery and building material to complete said factory; that petitioner would be financially unable to complete its factory; that the land in the vicinity would not produce sugar beets; that said independent company would not be able to pay for beets under contract; that the promoters of said enterprise were dishonest and that it was a dangerous investment, and that in the spring of 1917 the assistant general manager of the Utah-Idaho Sugar Company wrote to the Anderson Brothers Bank at Rigby, Idaho, intimating that said bank had been working in the interest of the [173] Beet Growers Sugar Company, and indirectly threatening the bank with reprisals if it did not cease supporting the enterprise in which petitioner was engaged, and work in harmony with the Utah-Idaho Sugar Company; that by reason of the Findings and Conclusions reached by the Federal Trade Commission in respect to the actions of the Utah-Idaho Sugar

Company, the order was entered commanding said Utah-Idaho Company to cease and desist from using its financial power and influence so as to cause bankers and others to refuse credit to petitioner and others engaged in the purchase of sugar beets, and the manufacture and sale of refined sugar in interstate commerce, and from inciting financial trouble or embarrassment to petitioner and competitors or prospective competitors, or by purchasing or acquiring secretly the whole or a controlling interest in the business of competitors or prospective competitors who were engaged or intend to engage in the manufacture and sale of refined beet sugar in interstate commerce; that the said Utah-Idaho Sugar Company in now bidding and conditions that the stockholders of petitioner at force sale, is a deliberate attempt upon the part of the said Utah-Idaho Sugar Company to prevent petitioner from engaging in an independent beet sugar manufacturing business in interstate commerce, and an attempt upon the part of said company to acquire said property under such terms and conditions that the stockholders of etitnoner would sustain a loss of approximately ninety per cent of their invested capital, and said acts on the part of the said Utah-Idaho Sugar Company is but the culmination of the plans and purposes of said company to destroy petitioner as an independent competitor, and to put it, as such competitor, out of business; that the sale of said property to the said Utah-Idaho Sugar Company upon the terms above stated, would in effect eliminate all [174]

of the stockholders of petitioner from the beet sugar business in the State of Idaho; and your petitioner therefore alleges that the confirmation of the sale of said beet sugar factory and property to the Utah-Idaho Sugar Company would operate unfairly to petitioner and its stockholders and to their great and irreparable damage and injury, and said confirmation, as your petitioner is informed and verily believes, would be in violation of a judgment and decision of the Federal Trade Commission in the proceedings hereinbefore referred to, and would be in violation of the various acts of Congress of the United States known as Anti-Trust Laws, and particularly in violation of Section 5 of the Act of September 26, 1914, known as the Federal Trade Commission Act.

WHEREFORE, petitioner prays:

1. That an order of this Honorable Court be entered refusing to confirm the sale of the property of the beet sugar plant of petitioner, and such other of its property as was sold by the Receiver on March 1, 1924, and

2. That the Court order the Receiver herein to readvertise said property for sale and to sell the same to a competent and proper purchaser at 12 o'clock noon, on Tuesday, July 1, 1924, and at a minimum price of not less than $1,150,000.00, and

3. That the Court order that the petitioner herein have the right of redemption from said sale of said property, as provided for by the statutes of the State of Idaho in mortgage foreclosure proceedings, and that the period of redemption from

any sale authorized or approved by the Court shall not commence or begin to run until the full purchase price of said property shall have been paid.

MARIONEAUX, KING & SCHULDER,
Attorneys for Beet Growers Sugar Company.
[175]

"Petition duly verified by George E. Sanders, March 13, 1924." [176]

UNITED STATES OF AMERICA.

Before FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 3d day of October, A. D. 1923. Present: VICTOR MURDOCK, Chairman; JOHN F. NUGENT, HUSTON THOMPSON, VERNON V. VAN FLEET, NELSON B. GASKILL, Commissioners.

DOCKET No. 303.

FEDERAL TRADE COMMISSION

vs.

UTAH–IDAHO SUGAR COMPANY, THE AMALGAMATED SUGAR COMPANY, E. R. WOOLLEY, A. P. COOPER and E. F. CULLEN.

FINDINGS AS TO THE FACTS AND CONCLUSIONS.

The Federal Trade Commission having issued and served its complaint herein, upon the respond-

ent, Utah-Idaho Sugar Company, The Amalgamated Sugar Company, E. R. Woolley and A. P. Cooper, the respondent E. F. Cullen not being served, wherein it is alleged that it had reason to believe that said respondents have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of the Act of Congress approved September 26th, 1914, entitled, "An Act To Create a Federal Trade Commission to define its powers and duties, and for other purposes," and that a proceedings by it in respect thereof would be to the interest of the public, and fully stating its charges in this respect, and the respondents having entered their appearance by their respective attorneys, and having filed their answers admitting certain of the allegations of said complaint and denying certain others thereof, and the commission having introduced testimony and evidence in support of the charges in said complaint, and the respondents having introduced testimony and evidence in opposition thereto, and counsel for the Commission, Utah-Idaho Sugar Company, The Amalgamated Sugar Company and E. R. Woolley, having filed briefs as to the law and facts in said proceeding, and the commission having heard the argument of the respective counsel on the merits of the case, except that The Amalgamated Sugar Company and E. R. Woolley through their counsel rested their case on their brief and having duly considered the record and being fully advised in the premises, now makes this its report in writing, stating its findings as to the facts and conclusions as follows:

FINDINGS AS TO THE FACTS.

Respondent, Utah-Idaho Sugar Company, is a corporation organized under the laws of the State of Utah in the year 1907, with its principal place of business in the city of Salt Lake in said state. It was organized for the purpose of consolidating, and did consolidate, into a single corporation a number of theretofore separate competing corporations all engaged in the purchase of sugar beets and the manufacture and sale of sugar beets and other products of the sugar beet in various states of the United States. The companies thus consolidated and merged into said Utah-Idaho Sugar Company were as follows: [177]

(1) The Utah Sugar Company incorporated in the year 1890, with its principal place of business and a factory for the manufacture of beet sugar at the city of Lemhi, Utah, with a beet slicing capacity of about 1,000 tons per day. (A ton of beets will make anywhere from 150 to 275 pounds of sugar, dependent upon soil and seasonal conditions.)

(2) The Idaho Sugar Company incorporated in the year 1903, with its principal place of business and factory for the manufacture of beet sugar at the city of Idaho Falls in the State of Idaho, with a beet slicing capacity of 900 tons per day. In the year 1905 this company acquired the Fremont Sugar Company, which had its principal place of business and a factory for the

manufacture of beet sugar at the town of Sugar City in the State of Idaho, with a beet slicing capacity of 900 tons per day.

(3) The Western Idaho Sugar Company incorporated in the year 1905 with its principal place of business and a factory for the manufacture of beet sugar at the city of Nampa, State of Idaho, with a beet slicing capacity of 800 tons per day.

After the creation of the Utah-Idaho Sugar Company in the year 1907, as above set out, that company has built or acquired the following additional factories.

(1) A factory at the town of Elzinore, Utah, built in 1911, with a beet slicing capacity of 300 tons per day.

(2) A factory at the town of Payson, Utah, built in 1913, with a beet slicing capacity of 650 tons per day.

(3) A factory at the town of West Jordan, Utah, built in 1916, with a beet slicing capacity of 650 tons per day.

(4) A factory at the town of Yakima, State of Washington, built in 1917, with a beet slicing capacity of 650 tons per day.

(5) A factory at the town of Brigham City, Utah, built in 1916, with a beet slicing capacity of 650 tons per day.

(6) A factory at the town of Toppenish, Washington, built in 1917, with a beet slicing capacity of 750 tons per day.

(7) A factory at the town of Sunnyside, Washington, moved from Grants Pass, Oregon,

in 1919, with a beet slicing capacity of 650 tons per day.

(8) A factory at the town of Delta, Utah, built in 1920, with a beet slicing capacity of about 700 tons per day.

(9) A factory at Spanish Fork, Utah, removed thither from Nampa, Idaho, in 1916. The beet slicing capacity of the factory is 800 tons per day.

Respondent, The Amalgamated Sugar Company, is a corporation organized in the year of 1902, under the laws of the State of Utah, with its principal place of business in the city of Ogden, in said state. It was organized for the purpose of consolidating, and did consolidate, into a single corporation two separate competing corporations engaged in the purchase of sugar beets and the manufacture of and sale of beet sugar and other products of the sugar beet in various states of the United States. The companies thus consolidated with and merged into The Amalgamated Sugar Company were as follows: [178]

(1) The Ogden Sugar Company, incorporated in the year 1898 with its principal place of business and a factory for the manufacture of beet sugar in the city of Ogden, Utah, with a beet slicing capacity of 900 tons per day.

(2) The Logan Sugar Company, incorporated in the year 1901, with its principal place of business and a factory for the manufacture of beet sugar in the town of Logan,

Utah, with a beet slicing capacity of 650 tons per day.

(3) This respondent in the year 1912 erected a further factory near the town of Burley, Idaho, with a beet slicing capacity of 600 tons per day.

By reincorporation under the name "The Amalgamated Sugar Company" in the year 1915, this respondent absorbed and consolidated with the two companies above mentioned.

(4) Lewiston Sugar Company, a corporation organized in 1903, with its principal place of business and a factory in the town of Lewiston, Utah. At the time of such consolidation the beet slicing capacity of its said factory was 800 tons per day.

Since said reorganization, this respondent has erected or acquired the following additional beet sugar factories:

(5) A factory located near the town of Twin Falls, Idaho, erected in 1916, with the beet slicing capacity of about 800 tons per day.

(6) A factory at Paul, in the State of Idaho, erected in the year 1917, with a beet slicing capacity of about 650 tons per day.

(7) A factory located near the town of Smithfield, Utah, erected in the year 1917, with a beet slicing capacity of about 700 tons per day.

The factories of the corporate respondents, the dates of their acquisition and their geographic loca-

tion are more fully described in the attached map, which is used for the purpose of illustration only, and is made a part of the findings, but it is not an exhibit in the proceeding.

From the time of their acquisition or erection, said respondents have continuously operated and still operate the foregoing factories in the manufacture of beet sugar and other products, such as sugar molasses, derived from the sugar beet in competition with other individuals, partnerships and corporations similarly engaged, and have continuously sold said commodities to purchasers in various states of the United States. (The molasses is shipped to points where said corporation maintains special equipment in connection with a few of their factories, for the purpose of manufacturing said molasses into refined beet sugar.) Refined beet sugar is the product principally so sold and references to said product will hereinafter be limited thereto. Respondents ship said beet sugar, when so sold from their said several manufacturing factories to said purchasers at points in states other than the state of said manufacture, in competition with other individuals, partnerships and corporations similarly engaged in the production and/or sale of beet and cane sugar in interstate commerce. [179]

The sugar beets from which respondents manufacture the aforesaid product are secured from farmers so far as possible in territory adjacent, in each instance, to aforesaid factories. From time to time, however, and as considerations of convenience and other circumstances render the same

desirable or necessary, respondents purchase and ship sugar beets from territory not so contiguous, and in many instances, in a state or states other than that in which is located the factory at which said beets are to be converted into sugar. In such instances they ship the sugar beets thus secured from points in the state where purchased to such factory located in such other state.

For many years it has been the practice of these respondents to annually, in advance of the growing season to send agents, by them denominated field men and agricultural superintendents, among the farmers in the States of Utah, Idaho, Oregon, Nevada and Washington, for the purpose of entering with said farmers into contracts whereby the farmers undertake to grow sugar beets for said respondents under the supervision, in consideration of certain prices to be paid by respondents partly before and partly after the same are manufactured into sugar. With few exceptions, all the sugar beets procured by said respondents for conversion in their factories, as heretofore set out, have been and are purchased in the performance of said contracts. For many years, and as a regularly recurring annual practice, said respondents have secured, and still secure, many thousands of tons of sugar beets in the manner above set out, which beets have been and are, converted into sugar at said factories, and said product regularly has been, and is, in the ordinary course of business, shipped and sold by said respondents in interstate commerce. There has thus existed for many years, and still exists, a regular flow or current of inter-

state commerce in sugar beets and beet sugar, beginning with the contracts for and production of said sugar beets, which are sent from the states, in many instances, where the same are produced, with the expectation that they will end their transit in the form of beet sugar after the purchase of that commodity in other states, which current of commerce includes all cases where purchases of beets are made by respondents for shipment to another state or for conversion within the state where purchased and the shipment outside of the state of the beet sugar resulting from such conversion.

There has been since the formation of the companies afterward merged into the Utah-Idaho and The Amalgamated Companies, as hereinbefore set out (hereinafter referred to as predecessor companies) and continuously has been, a close and intimate relation between the prominent stockholders, directors and officers of the predecessor and of the consolidated companies. Joseph F. Smith was president of the Utah Sugar Company, the Idaho Sugar Company, the Fremont Sugar Company, and the Western Idaho Sugar Company, while Horace G. Whitney was at the same time secretary of each of said companies. Upon the organization of the respondent, Utah-Idaho Sugar Company, Joseph F. Smith became president and Horace G. Whitney became secretary-treasurer of that company. Joseph F. Smith likewise became president of respondent, The Amalgamated Company, upon its incorporation in 1902, and continued in that capacity until the year 1915, when he was

succeeded by Anton Lund, a heavy stockholder in both the Utah-Idaho and The Amalgamated Companies. Thomas R. Cutler was general manager of the predecessor companies later merged into the Utah-Idaho Company, was for some time thereafter general manager of that company, and was a director of The Amalgamated Company at the time of its organization in 1902. William H. Wattis in 1914, was president of respondent The Amalgamated Company, and was a member of its board of directors in 1915, 1916 and 1917. In the last named year he became a director of the Utah-Idaho Sugar Company and was placed upon its executive committee. In 1919, he was a prominent stockholder in The Amalgamated Company and in 1920, a heavy stockholder in the Utah-Idaho Company. Of the last named company he became general manager in 1921, and had been connected with that company in one capacity or another for a great many years. Charles W. Nibley was connected officially with The Amalgamated Sugar Company from the time of its original corporation until the absorption of the Lewiston Company in 1916. In 1915, he was a director of the Utah-Idaho Company, and in 1917, became its general manager. L. R. Eccles was vice-president of the Lewiston Company at the time of its consolidation with [180] The Amalgamated Sugar Company in 1915, and in that and the following year was a director of the Utah-Idaho Company, in which capacity he was succeeded by his brother D. C. Eccles in 1917. L. R. Eccles was also vice-president, general manager and director of The Amalgamated Company

from 1915 to September of 1918. D. C. Eccles was a director of the Utah-Idaho Company in 1916 and 1917, and a director of The Amalgamated Company in 1915 and 1916. Joseph Geohegan was a director of the Utah-Idaho Company at the time of its organization and his company the Geohegan Brokerage Company, was joint sales agent for The Amalgamated and the Utah-Idaho Companies up to the year 1916, when he died. Besides these more prominent and influential persons, there were a number of others who from time to time were stockholders, directors, administrative or other officials and employees of both The Amalgamated and the Utah-Idaho Companies, being frequently attached in some capacity to both these respondents at the same time.

At an early period a mutual understanding and intention was manifested between respondents, Utah-Idaho and Amalgamated Companies (hereinafter referred to as corporate respondents), to absorb and retain for themselves to gradually expanding beet sugar industry beginning in the State of Utah and spreading thence to the States of Idaho, Washington, Oregon, Nevada and Montana. H. O. Havemeyer, president of the American Sugar Refining Company, was a large stockholder in corporate respondents. He became identified with their interests some time prior to the year 1902, and was active in giving assistance and advice in the matter of absorbing and retaining said industry and of keeping independent enterprises (X) out of the field, as hereinafter referred to. Corporate respondents reported to him the efforts of inde-

pendent enterprises to invade the field and what efforts were being made to suppress or absorb them and in turn he advised and ordered what steps should be taken in that behalf. He was uniformly offered the opportunity to participate in stock purchases when independent enterprises were acquired or controlled in that manner. At his death his son Horace Havemeyer, as administrator, succeeded him in the management of his interests in corporate respondents and their stock controlled companies.

In the year 1903 the predecessor companies of corporate respondents held a joint meeting of their board of directors, presided over by Joseph F. Smith. The purpose of the meeting was to eliminate an independent beet sugar company which proposed to erect a factory at Lewiston, Utah, for the avowed reason that "the proposed factory would be a menace to the existing companies." The Lewiston Company was afterward absorbed by the respondent The Amalgamated Company, as hereinbefore set out.

In the year 1905 the predecessor companies of respondent Utah-Idaho Company forestalled and prevented one Boutell and one Hoover from financing and establishing an independent enterprise near Payette in Southwest Idaho or Arcadia, Oregon. This was done through Thomas R. Cutler, manager of said predecessor companies, by promising to erect a factory near Payette and using influence to persuade the farmers of the vicinity to enter into beet contracts with said predecessor companies. H. O. Havemeyer instructed said Cutler

to buy a factory site in the same town Boutell and Hoover decided to locate and to do the same with regard to any independent enterprise seeking to enter the states wherein said predecessor companies were operating. Said Cutler used certain influence at his command to stop the operations of Messrs. Boutell and Hoover, both near Payette and at other points, notably at Boise, Idaho. As a result of aforesaid things done by said predecessor companies, all efforts of said Boutell and Hoover to establish an independent enterprise in the State of Idaho were frustrated and notably at the towns of Payette, Boise and Nampa, and thus the establishment of said independent enterprise at either place and the potential competition thereof with corporate respondents was forestalled and prevented.

By the year 1905 the predecessor companies of the Utah-Idaho Company bought sufficient stock to control the Snake River Valley Company, an independent enterprise then competing with the predecessor companies of corporate respondents, which owned and was operating a beet sugar factory at Blackfoot, Idaho. This was the result of efforts in that behalf begun by the predecessor companies of respondent Utah-Idaho Company, through aforesaid Cutler as early as the year 1905, when he began buying up stock in said independent

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(X) The words "independent enterprise" are used throughout these findings to designate enterprises other than, and competing with or potential competitors of, the Utah-Idaho and The Amalgamated Sugar Companies.

enterprise. He wrote H. O. Havemeyer that he was anxious to obtain control of said independent enterprise for said predecessor companies and that they were determined to get said independent enterprise into their hands. Said independent enterprise was later absorbed by said predecessors as above set out, thereby eliminating the competition which had theretofore existed between said independent enterprise and the predecessor companies of corporate respondents.

The Layton Sugar Company was incorporated in the year 1915 for the purpose of erecting a beet sugar factory at the town of Layton, Utah, and engaging in the business of purchasing sugar beets and of manufacturing and selling beet sugar in interstate commerce. Upon its organization and by agreement such corporate respondent invested $100,000.00 in the stock of said company, and these holdings together with the holdings of others closely identified in other interests with corporate respondents, put into the hands of the said respondents the control of the operation of the Layton Sugar Company with the effect of preventing any competition between that company and corporate respondents.

In the year 1909 the corporate respondents agreed upon an interstate territorial division of the beet producing territory in which boundary lines were established defining the territory in which The Amalgamated Company should have the sole right to operate without invasion by the Utah-Idaho Company, and *vice versa*. This agreement continued to the year 1916 when it was superseded

by a similar agreement rearranging such boundary lines and territory.

By the year 1916 corporate respondents together (but not in the sense of joint ownership) owned or controlled all the beet sugar factories in the States of Utah, Idaho, Nevada, Oregon and Washington, including factories built by themselves and the factories of independent enterprises which they have acquired, wholly or partly, through obstructive, coercive and unfair methods as herein set out, and in connection with such building and acquisition had prevented the entry of other proposed independent enterprises into the field by means of similar obstructive and suppressive measures. As a result said respondents were sometime prior and up to the year 1916, enjoying a practical if not an entire monopoly of the beet sugar industry in the States above mentioned.

At this time each respondent was possessed of monies, assets and properties of the value of many million dollars. The Utah-Idaho Sugar Company was originally capitalized at $13,000,000, which was increased to $30,000,000 in May, 1917. The properties and assets of the three predecessor companies merged in the Utah-Idaho Company at the time of said merger were of the total value of over $11,000,000. The Amalgamated Sugar Company was capitalized at $25,000,000 which after two increases were finally fixed at $30,000,000. At the time the conspiracy hereinafter set out was entered into, the corporate respondents were enjoying a very large and lucrative business, as is shown by the

following table of the combined total sales of the beet sugar by said respondents in interstate and intrastate commerce during the years indicated.

	Total Sales	Interstate Distribution
1916	2,644,949—100 lb. bags	2,250,820—100 lb. bags
1917	2,824,557 " " "	2,342,586 " " "
1918	2,458,678 " " "	1,901,205 " " "
1919	2,565,870 " " "	1,895,017 " " "

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The general management and control of all the aforesaid business and activities of corporate respondents were and are exercised by them from their principal offices in the Cities of Salt Lake and Ogden, Utah, respectively, from which points they control the procuring and handling of sugar beets from field to the factory, the operations of said factories, the diversion of beets from one to the other, the extension and development of the beet growing industry, the location and erection of new factories, and the closing down and removal of factories, from one place to another from time to time, and in divers instances across State lines, all in a manner to consolidate and unify their large operations, and to best prevent or hinder the competition of independent enterprises entering or desiring to enter into said industry in aforesaid States in which respondents operate, and thus so secure and retain to said respondents aforesaid monopoly of the beet sugar industry in said territory.

In about the year 1915, respondents, Utah-Idaho

Sugar Company, The Amalgamated Sugar Company, E. R. Woolley, A. P. Cooper, and E. F. Cullen, secretly agreed, conspired and confederated with each other to maintain and retain the aforesaid monopoly of corporate respondents, to prevent the establishment of beet sugar enterprises and the building of sugar factories by persons of interests other than respondents, The Amalgamated Sugar Company and the Utah-Idaho Sugar Company, and to suppress all competition in the manufacture, sale and distribution of beet sugar in the States of Utah, Idaho, Nevada, Oregon and Washington, and in the sale in interstate commerce of refined beet sugar produced in those States. At the time of the issuance of the complaint herein and the filing of their answer to the same, respondents E. R. Woolley and A. P. Cooper were residents of Salt Lake City in the State of Utah. Respondents E. F. Cullen was not served with the complaint, and will not be considered further as a respondent in these proceedings. The acts and things done by the said Cullen, however, in so far as they throw light upon the acts and things done by the other respondents herein, are hereinafter referred to.

Pursuant to, and to effect the objects of aforesaid secret agreement, conspiracy and confederation and to accomplish the purpose thereof, respondents did the following acts and things:

(a) In the fall of 1915 and the spring of 1916, one John A. Hendrickson, a resident of Logan, Utah, promoted with the assistance of others an independent enterprise with the intention of erect-

ing a beet sugar factory near the town of Smithfield, in said County and State, with the purpose and intention of engaging in the manufacture of beet sugar and the sale of that product in interstate commerce. The town of Smithfield and its vicinity lay in the territory allocated to The Amalgamated Sugar Company under the division interstate territory between the two corporate respondents, heretofore referred to and provided for in a certain contract, being Exhibit 51, which is hereby referred to and made a part of this finding. This independent enterprise secured an option upon a factory site and a large number of beet contracts with the farmers in the vicinity of said site, and, further, had the financing of the new enterprise well under way through stock subscriptions secured from farmers and business men in the vicinity of Smithfield and from other persons of financial responsibility in the State of Utah and elsewhere. When the corporate respondents learned that said independent enterprise was thus progressing, they called and held in the vicinity of the proposed independent factory meetings of aforesaid stock subscribers in said enterprise and farmers under contract to grow sugar beets for it. The purpose of said meeting was to discourage and dissuade said financial backers and farmers from further supporting said enterprise. Joseph Scowcroft, Director and Vice-president of the respondent, The Amalgamated Company, Merrill Nibley, who became assistant General Manager of the respondent, Utah-Idaho Company in 1916, Fred Taylor, Secre-

tary and Treasurer of the respondent, The Amalgamated Company and L. R. Eccles, a Director of the Utah-Idaho Company, [183] attended said meetings and made statements to the effect that the independent enterprise was financially unsound, would not succeed, was unethically invading territory which belonged to The Amalgamated Company and that that company would itself build a factory near Smithfield in the immediate future. Shortly after said meetings held in the spring of 1916, the respondent, The Amalgamated Company purchased a site in close proximity to the site of the independent factory and started breaking ground as an apparent first step toward building a factory, but without the intention to so build, and in fact said factory was not built.

Said Hendrickson entered into a preliminary agreement with the Dyer Company for the erection of the independent factory. The Dyer Company is a corporation organized under the laws of the State of Ohio, with its principal office in the city of Cleveland in said State. It is, and for many years prior to 1916, had been engaged in the manufacture of machinery for the production of beet sugar, and in the building and equipping of beet sugar factories in many portions of the United States, and was the largest of such manufacturers and builders. Up to the time these proceedings were commenced the Dyer Company had built and equipped thirteen factories for respondent, Utah-Idaho Company, and four factories for the respondent, The Amalgamated Company. Upon learning that said agree-

ment had been entered into, Charles W. Nibley, then a director of respondent, Utah-Idaho Company, telegraphed the Dyer Company at Cleveland, Ohio, protesting against the erection of said independent factory, and as a result of said protest the Dyer Company withdrew from said preliminary agreement.

As a result of the aforesaid things, the financial backers and farmers who had contracted to grow beets for said independent enterprise were discouraged from continuing their support of the same, were induced to break their contracts and withdraw their undertakings of financial support, all of which resulted in the abandonment of said enterprise by said Hendrickson and his associates, and thus the establishment thereof and the potential competition between the same and corporate respondents in and about the purchase of beets and the manufacture and sale of beet sugar in interstate commerce was forestalled and defeated.

(b) In December, 1916, the West Cache Sugar Company, an independent enterprise, was incorporated under the laws of the State of Utah, by aforesaid Hendrickson, one Lorenzo H. Stohl, and others for the purpose of erecting a beet sugar factory in Cache Valley or West Cache Valley in said State, and to purchase sugar beets and manufacture and sell beet sugar in interstate commerce. Said Hendrickson and Stohl were the promoters of said enterprise and became stockholders in this corporation. Hendrickson further became President, Treasurer and a Director in said Company upon its

incorporation. Upon learning that said projected enterprise was under way, with the purpose intent and object of maintaining their agreement, as referred to in Exhibit 51, to the exclusion of competitors, respondents The Amalgamated Sugar Company and Utah-Idaho Sugar Comapny, through their various officers and agents, sought to discourage and prevent the establishment of said enterprise by threats uttered to said incorporators to the effect that these respondents would not permit any independent factory to be erected in said Cache Valley, that if the same should be erected, these respondents would force the price of sugar beets up to $7.00 per ton (the prevailing price being then $5.50); that said enterprise was an invasion of Amalgamated territory, and that if the West Cache Sugar Company succeeded in erecting a factory and entering into business said respondent, The Amalgamated Sugar Company, would "make it so hot" for said company that its promoters would wish that they *would* never started the undertaking. The West Cache Company succeeded in erecting its factory and engaged in the years 1918 and 1919 in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce in competition with corporate respondents, whereupon respondents, The Amalgamated Sugar Company, financed and furnished funds to respondent Woolley, and through him bought up the stock control of the West Cache Company, and through the power thus secured, procured the discharge of said Hendrickson as an officer of said [184] company,

whereby respondents secured complete control of the management of said company and of its factory for the purpose of eliminating, and did eliminate, said company as a competitor. In order to discredit said Hendrickson and Stohl and thus destroy the influence they had exerted in the management of said independent enterprise as the successful promoters thereof, a vexatious and groundless lawsuit was instituted by respondent Woolley under the secret and undisclosed instructions of respondent The Amalgamated Company, against said Hendrickson and Stohl charging them with fraudulent conversion of funds belonging to the West Cache Sugar Company. Said suit was afterward dismissed on its merits by a contract between said Hendrickson and Stohl on the one part and numerous parties including the respondent The Amalgamated Company on the other part. Pursuant to one of the terms of the said contract, said Hendrickson and Stohl sold and delivered to respondent, The Amalgamated Company, and its associates in said contract, all their stock in the West Cache Sugar Company. Said contract further provided that Hendrickson and Stohl should destroy by burning, certain evidence of unfair and illegal practices used by respondent Woolley and his associates in securing control of said independent. Hendrickson and Stohl carried out said provision by burning said evidence.

(c) The Beet Growers' Sugar Company, an independent enterprise, was incorporated in May, 1917, under the laws of the State of Idaho, for the

purpose of erecting a beet sugar factory near the town of Rigby, Idaho, and of engaging in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce. Shortly after said incorporation and while said factory was in course of construction, respondents Utah-Idaho Company, Woolley, Cooper and Cullen, during the years 1917 and 1918, undertook to prevent the successful operation of said independent, and the erection of its factory by making false, unfair and misleading statements to farmers under contract to supply beets to said independent factory and to farmers with whom such contracts were or would be made, and to stockholders of said independent company to the effect that the company would not be able to get beet seed to supply to contracting farmers nor to get the necessary machinery and building materials to complete said factory; that it would be financially unable to complete its factory; that the land in the vicinity of said factory would not produce sugar beets; that said independent company would not be able to pay for beets under contract; that the promoters of said enterprise were dishonest and that it was a dangerous investment. At this time respondents Cooper and Cullen were in the employ of said Beet Growers' Sugar Company as Consulting Engineer in charge of construction, and Bookkeepers, respectively. Said Cooper and Cullen sought to embarrass the Beet Growers' Company and to throw it into the hands of a Receiver by going about in the States of Utah, and Idaho among its creditors, stockholders and those inter-

ested in the success of said enterprise and making false and misleading statements concerning said company to the effect that it was insolvent and that due to mismanagement it would not succeed. Respondents Cooper, Cullen and Woolley further sought to induce prospective investors not to purchase stock in, or otherwise finance the Beet Growers' Company, by making to said prospective purchasers similar false and misleading statements. Said Cooper and Cullen further made false and misleading statements to sundry employees of the Beet Growers Sugar Company and others interested in its success, which statements were derogatory of the standing and reliability of the officers of said company, and statements to the effect that the financial condition of said company was bad and that said company was going into the hands of a Receiver. Respondent Woolley employed at Salt Lake City, Utah, David A. West and Ezra Ricks as secret and undisclosed agents to acquire stock in the Beet Growers Company for the purpose of bringing a stockholder's action to secure the appointment of a Receiver for said company in the State of Idaho, which said suit was brought by said Ricks upon the alleged ground of dishonesty and mismanagement of said company's officers. Said charges, made the basis of said suit, were false and said suit was afterwards dismissed. Because of their aforesaid conduct, respondents Cooper and Cullen were discharged by the Beet Growers' Company, and thereafter they visited points in Utah, and Idaho, making to stockholders and creditors of

said company similar false and misleading statements, all in the attempt to throw said company into the hands of a Receiver and eliminate it as a competitor of corporate respondents. [185]

In the spring of 1917, Merrill Nibley, Assistant General Manager of respondent Utah-Idaho Company, wrote to the Anderson Brothers Bank at Rigby, Idaho, intimating that said bank had been working in the interest of the Beet Growers Sugar Company, and indirectly threatening the bank with reprisals if it did not cease supporting said independent enterprise and work in harmony with the Utah-Idaho Company.

(d) The Oregon-Utah Sugar Company, an independent enterprise was incorporated in September, 1915, under the laws of the State of Utah, for the purpose of erecting a beet sugar factory at the town of Grants Pass, Oregon, and of engaging in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce. Charles W. Nibley, at that time a Director in both the Utah-Idaho and The Amalgamated Companies, assisted in the organization of said independent enterprise and in the financing thereof. As part of said financing said Nibley undertook to procure loans up to the amount of $400,000 to defray operating expenses; the said Nibley from time to time and during the construction of said factory kept the respondent Utah-Idaho Company fully informed as to the progress then being made by the said Oregon-Utah Sugar Company and at no time was it the intention of the said respondent to permit said com-

pany to operate and compete with either it or The Amalgamated Sugar Company in the sale and distribution of beet sugar in interstate commerce. When the independent factory was almost completed and its operation an assured success, said Nibley withheld said financial support, and used his influence to force said independent enterprise to sell its said factory, property and other assets to said Utah-Idaho Company, which result was accomplished, thereby eliminating competition between said independent enterprise and the Utah-Idaho Company in the purchase of sugar beets and in the manufacture and sale of beet sugar in interstate commerce.

(e) In the years 1915 and 1916, one Colonel Mundy and others were promoting and endeavoring to establish an independent beet sugar enterprise in Southern Oregon, and to that end had obtained options for the purchase of 16,000 acres of land upon which to grow sugar beets. $15,000 had been paid on said options. Mundy began negotiations to purchase an existing factory located at Fallon, Nevada, and belonging to the Nevada-Utah Sugar Company, with the intention of moving and re-erecting said factory upon the site finally chosen for his own enterprise. Upon learning of the progress of said independent enterprise, respondent Utah-Idaho Company sent certain of its agents from Salt Lake City, Utah, into Oregon and especially the southern part of that State wherein said Mundy and his associates were operating, said agents being sent for the purpose of obtaining, and they did obtain, in-

formation as to the source or sources from which said enterprise intended to procure beet seed, which at that time, because of the war conditions, was exceedingly scarce and hard to obtain. Upon securing such information, said respondent secretly, through respondent The Amalgamated Company, negotiated for said seed in such a manner as to make it impossible for said independent enterprise to obtain same. The agents sent into Oregon, as aforesaid, further sought to discourage farmers and other persons interested, from growing beets for said independent enterprise and otherwise contracting with it, by statements to the effect that said independent enterprise had no beet seed and could not get any, and that their principal had bought up all the seed in the country, which statement was at that time untrue. Respondent Utah-Idaho Company through C. W. Nibley acquired 51% of the stock of the Nevada-Utah Sugar Company, which was not operating its factory, in order to prevent, and thus did prevent said Mundy and associates from securing the factory of said Nevada-Utah Company. As a result of aforesaid things done by respondent Utah-Idaho Company, the establishment of said independent enterprise by said Mundy and his associates was forestalled, and the potential competition between the same and corporate respondents in and about the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce was forestalled and prevented. [186]

(f) The Montana-Utah Sugar Company, an independent enterprise, was incorporated in July, 1916, under the laws of the State of Montana for the purpose of building a beet sugar factory near the town of Hamilton in said State, and to engage in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. Said independent enterprise negotiated with the Dyer Company for the construction of the factory up to the point where a price therefor had been fixed, when the Dyer Company refused to proceed on the ground that it would interfere with that company's two best customers, meaning corporate respondents. The Montana-Utah Sugar Company then let the contract for the building of its factory to another company, and said factory was about one-fourth completed, involving an expenditure, including payments on machinery of about $350,000. Respondent Utah-Idaho Company about this time began to make and publish through agents and otherwise in Montana and in the district of Hamilton in said State, disparaging untrue and misleading statements concerning the promoters and others interested in said enterprise, advised investors and prospective investors in said independent enterprise that the purchase of its stock was a bad investment, and otherwise prejudiced the financing of said independent enterprise with the result that subscriptions to its stock were cancelled and other financial support was withheld, as a result whereof said independent enterprise went into the hands of a Receiver. Thereafter, said enterprise was turned

over to respondent Woolley upon his undertaking to reorganize and finance the same, and while in said respondent's hands and control was adjudged a bankrupt. Through the instrumentality of respondent Woolley the assets and other properties of said independent enterprise were sold to the Great Western Sugar Company. Said independent factory was not completed and potential competition between said independent enterprise and the corporate respondents in and about the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce were thus forestalled and prevented.

(g) The Gunnison Valley Sugar Company, an independent enterprise, was incorporated in 1917, under the laws of Utah, for the purpose of building a beet sugar factory at the town of Gunnison, in said State, and to engage in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce. The site chosen was within the territory allocated to the Utah-Idaho Company under the agreement whereby that company and The Amalgamated Company divided territory as hereinbefore set out. On learning of the activities of this independent, respondent Utah-Idaho Company sought to prevent the erection of said independent factory and the success of the Gunnison Valley Company by making, through various agents, false and misleading statements tending to discourage the purchase of stock in said independent, to obstruct the financing thereof and to discourage farmers in the vicinity from growing beets or

contracting to grow beets for said independent enterprise. Said false and misleading statements were to the effect that the purchase of stock in said independent enterprise was a bad investment; that the machinery going into its factory was second-hand, corroded, worthless and would never make sugar; that said independent enterprise could not secure sufficient beet seed; that the land contiguous and naturally tributary to the site of said factory would not raise beets. Further said respondent made attacks upon the character of promoters and other persons prominent in the financing and operation of said independent enterprise. Respondent Utah-Idaho Company further sought to prevent said independent enterprise from procuring supplies of sugar beets by seeking to induce one Royal M. Barney and others to break the contracts into which they had entered for the growing of sugar beets for said independent enterprise, and soliciting said Barney and others to act as its agent in persuading other beet growers to break their similar contracts with said independent enterprise, which at that time was an actual competitor of said respondent in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce. [187]

* * * Company negotiated with Dyer Company to build its said factory, whereupon,

(h) The Springville-Mapleton Sugar Company, an independent enterprise was incorporated in June, 1917, under the laws of the State of Utah, for the purpose of erecting a beet sugar factory near the

towns of Springville and Mapleton, in said State, and of engaging in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. Said * * * respondent Utah-Idaho Company endeavored to prevent the Dyer Company from contracting for and erecting said factory through correspondence with the officials of the Dyer Company indirectly requesting that such construction be not undertaken. The effort failed and the Dyer Company contracted with said independent enterprise to build its said factory, and did, subsequently build the same. Having failed in this, respondent Utah-Idaho Company endeavored to induce the Priority Committee of the United States Government to refuse permits for the shipment of building materials and machinery into the State of Utah necessary to the construction of the independent factory. The means used to accomplish this purpose were:

1. A letter written by Merrill Nibley, Assistant General Manager of the Utah-Idaho Company, to said Priority Committee, under date of October 1, 1917, in which letter misleading statements were made to the effect that the territory in question was already fully served by existing factories; that said factories had never been able to obtain their full requirements of beets from said district; that the proposed independent factory was not necessary and would not increase the food supply, and that the erection of said factory would draw heavily on the resources and labor of the country.

2. Mark Austin, at that time General Agricultural Superintendent of respondent Utah-Idaho Company, dictated and caused to be written a letter to said Priority Committee, containing similar untrue and misleading statements, and in addition containing some purported facts showing that the Utah-Idaho Company completely served the district in question and served it well, both with regard to the farmers' interests and the amount of sugar produced in said district. Said letter further stated that the farmers in that section considered the establishment of a new factory a serious mistake, and that in justice to the farmers it should not be done. Said letter further purported to be written by a farmer and beet growers of the section, who had the welfare of the farmer and the general industry at heart and was speaking from patriotic and disinterested motives. This letter said Austin caused one J. Wm. Johnson, an employee of the Utah-Idaho Company, to sign, and said letter was forwarded to said Priority Committee as a disinterested statement and expression of opinion of the said Johnson as a citizen of said district, reflecting the opinion of the citizens thereof. Said letter in no wise disclosed its real authorship, or that the purported writer thereof had any connection with, or in any manner spoke for the Utah-Idaho Company.

3. Fred G. Taylor, formerly Secretary of the Lewiston Sugar Company hereinbefore referred to, and Secretary of respondent, The Amalgamated Company, from 1915 to the summer of 1919, at which time he became a Director and the General

Manager of said Company, for a period of about nine months from October 1, 1917, resided in the City of Washington, D. C. During said period said Taylor's personal expenses, amounting to $2,320, were paid and reimbursed to him, one-half each, by the corporate respondents.

In November, 1917, respondent, Utah-Idaho Sugar Company, telegraphed said Taylor in Washington, requesting him to use his efforts to persuade the Priority Committee and other Government officials of the "utter needlessness" of the said independent factory, for the purpose of hampering, hindering and delaying the operations of said independent enterprise and the building of its factory.

By reason of the things done and the tactics employed, as in this subdivision above set out, the operations of said independent enterprise and the building of its factory were hampered, hindered and delayed. [188]

(i) The Idaho Co-operative Sugar Company, an independent enterprise, was organized under the laws of the State of Idaho in the year 1919 for the purpose of erecting a beet sugar factory near the town of Filer in said State, and of engaging in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. The site of this proposed independent factory is in territory allocated to the respondent, The Amalgamated Company, in the division of interstate territory between corporate respondents hereinbefore referred to, Exhibit 51. By June, 1920, said independent enterprise had sold $375,000 worth of stock

to farmers in the vicinity of Filer and to other persons, had bought land, and its factory and adjacent buildings were partly erected. Upon said enterprise thus showing substantial evidence of success, respondent Utah-Idaho Company, through one or more agents, sought to discourage investors in the region of Filer and elsewhere from purchasing stock in said independent enterprise on the ground that such investors would lose money. Respondent, The Amalgamated Company, in the spring of 1920 deposited $10,000 to its general account in a bank at Filer, Idaho, and in the same month made a substantial deposit in a bank in Kimberly, Idaho. Before this time said respondent had maintained no deposits either in these banks or in other banks in the towns of Filer and Kimberly. These deposits were made by respondent for the purpose of securing the co-operation and assistance of said banks in obstructing the financing of said independent enterprise and to prevent the obtaining of credit by it.

(j) The Southern Utah Company, an independent enterprise, was incorporated in November, 1915, under the laws of the State of Utah for the purpose of building a beet sugar factory near the town of Delta, Utah, and of engaging in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. Said company had entered into a contract for the erection of its factory and had sold stock in Utah and other places, when respondent Utah-Idaho Company, through its agent, James M. Davis, threatened one of the directors of said independent enterprises, say-

ing in effect that respondent Utah-Idaho Company would not permit the erection of said independent factory and that if the same were erected, said respondent would go to any length necessary to ruin said independent enterprise, and, further, said respondent sent agents about the territory adjacent to said proposed factory to induce, and they did induce, farmers not to contract for growing beets for said independent enterprise and to break contracts already entered into. Among other inducements, this respondent offered to loan, and did loan, to farmers money on long-time mortgages at 6% interest, and caused farmers by reason of such loans to break contracts which they had entered into with the Southern Utah Company. One James E. Steel besought Merrill Nibley, Assistant Manager of the Utah-Idaho Sugar Company, respondent, to desist from interfering with the plans of the Southern Utah Company and said Nibley's reply to Steel was, "We have got them on the run and will keep them on the run." The attempt to construct a factory by the Southern Utah Company was thus abandoned.

Shortly thereafter the Delta Beet Sugar Corporation, an independent enterprise was incorporated under the laws of the State of New York, for the purpose of building a beet sugar factory at the town of Delta, Utah, and to engage in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. The factory was built and operated by said Delta Beet Sugar Corporation in its aforesaid business in competition with the corporate respondents, and

in September, 1918, the respondent, Utah-Idaho Com., secretly employed respondent, E. R. Woolley, to go to New York City, New York, and there interview the owner of the assets of said Delta Corporation, and the said E. R. Woolley made untruthful statements regarding the value of said corporation's factory, with the purpose and object of discouraging said owner to the end that he would quit operating said corporation's factory and convey the same to respondent, Utah-Idaho Company, at an unreasonably low price. Thereafter in January, 1920, respondent Utah-Idaho Company, through respondent Woolley, as its agent, purchased practically all the stock of said independent enterprise and all of its properties and assets in the name of the Great Basin Sugar Company to which company said stock, properties and assets were transferred. The Great [189] Basin Sugar Company was organized under the laws of the State of Delaware by the respondent Woolley and certain individuals secured by him to act as incorporators and directors, for the purpose of acting as purchaser of aforesaid stock, properties and assets, which were purchased for the sum of $1,600,000, and certain other considerations, and the transaction was financed by respondent Utah-Idaho Company. Thereafter the Great Basin Sugar Company sold to the respondent Utah-Idaho Company all said stock, properties and assets acquired from the Delta Beet Sugar Corporation. In connection with the foregoing transactions the Delta Beet Sugar Corporation, and certain other individuals in-

terested therein, executed a written contract never thereafter to engage in the sugar industry or in any allied or associated industry in the State of Utah. As a result of the foregoing transactions, said independent enterprise was merged with respondent Utah-Idaho Company and the competition theretofore existing between said independent enterprise and corporate respondents as hereinbefore set out, was eliminated.

(k) On or about March 8th, 1920, the respondent Utah-Idaho Sugar Company caused to be published and circulated in nine newspapers in the State of Idaho, and in thirty-seven newspapers in the State of Utah, all circulating in the territory wherein competing independent enterprises and factories were and are operating, certain advertisements addressed to farmers and beet growers, containing insinuating statements to the effect that such competing companies were unreliable and financially irresponsible, and suggesting that farmers could safely contract for growing beets only with corporate respondents.

(l) On or about February 25th, 1920, respondent, Utah-Idaho Sugar Company purchased advertising space in several weekly and daily newspapers circulating in Utah and Idaho where competing independent enterprises and factories were operating and advised the publishers of said newspapers that it was planning to extend its advertising activities and would choose, as a medium, the paper friendly and loyal to its, said respondent's organization, thus seeking to influence by the use of great

wealth the editorial policies of said newspapers to be in favor of corporate respondents as against competitors in regard to the beet sugar industry.

Respondent at all times mentioned hereinbefore and in the record of this proceeding, and up to the time when the taking of testimony ceased, were continuing to carry out the purpose of the secret agreement, combination and conspiracy hereinbefore set out by means of acts, practices and conduct of a nature similar to the acts and things done to carry out said conspiracy hereinbefore set out, and said acts and things done, had and have the effect of obstructing, hindering, suppressing and eliminating competition in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce, and especially in the States of Utah, Idaho, Oregon, Washington and Nevada.

CONCLUSION.

The acts and things done by respondents as hereinbefore set out under the conditions and in the circumstances described in the foregoing findings, constitute unfair methods of competition in violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission.

[Seal] VICTOR MURDOCK,
Chairman.

Dated this 3d day of October, A. D. 1923.

Attest: OTIS B. JOHNSON,
Secretary. [190]

UNITED STATES OF AMERICA.

Before FEDERAL TRADE COMMISSION.

At a Regular Session of the Federal Trade Commission Held at Its Office in the City of Washington, D. C., on the 3d Day of October, A. D. 1923. Present: VICTOR MURDOCK, Chairman, JOHN F. NUGENT, HUSTON THOMPSON, VERNON W. VAN FLEET, NELSON B. GASKILL, Commissioners.

DOCKET No. 303.

FEDERAL TRADE COMMISSION

vs.

UTAH–IDAHO SUGAR COMPANY, AMALGAMATED SUGAR COMPANY, E. R. WOOLLEY, A. P. COOPER and E. F. CULLEN.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respective respondents (E. F. Cullen not having appeared or answered), the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondents have violated the provisions of the Act of Congress, approved September 26, 1914, entitled, "An Act to Create a Federal Trade Commis-

sion, to define its powers and duties, and for other purposes."

NOW, THEREFORE, IT IS ORDERED, that the respondents, Utah-Idaho Sugar Company, and the Amalgamated Sugar Company, each of them and their officers, agents and employees and E. R. Woolley and A. P. Cooper, shall forever cease and desist from conspiring or combining between and among themselves to maintain or retain the monopoly of corporation respondents hereinbefore set out; to prevent the establishment of beet sugar enterprises and the building of sugar factories by persons or interests other than said corporation respondents, and to hinder, forestall, obstruct or prevent competitors or prospective competitors from engaging in the purchase of sugar beets, and in the manufacture and sale of refined beet sugar in interstate commerce, and from effecting or attempting to effectuate such conspiracy and combination;

(1) By respondent corporations allocating to themselves certain territory and establishing interstate territorial divisions lines to be observed by and between themselves in the obtaining of sugar beets and the building of beet sugar factories for the purpose [191] of unlawfully protecting the said respondent corporations against competitors who may endeavor to come into such allocated territory for the purpose of obtaining sugar beets for the purpose of building factories for the manufacture of beet sugar.

(2) By intimidation, untruthful statements or otherwise, preventing, hindering or attempting to

prevent or hinder the Dyer Company, a corporation of Cleveland, Ohio, a manufacturer of beet sugar factory machinery and builder of beet sugar factories in the United States or any other such manufacturer, from engaging in interstate commerce in selling, building and equipping beet sugar factories for competitors or prospective competitors who are engaged or who are about to engage in the purchase of sugar beets and the manufacture and sale of refined beet sugar in interstate commerce.

(3) By using their financial power and influence so as to cause banks and others to refuse credit to and to discourage competitors and prospective competitors from engaging in the purchase of sugar beets and the manufacture and sale of refined beet sugar, in interstate commerce.

(4) By using their financial power and influence to purchase land and erect factories in the territory where competitors or prospective competitors intend or shall undertake to start in the business of purchasing sugar beets and of manufacturing and selling refined beet sugar in interstate commerce, when such purchases or erections are not done in good faith and for no other purpose than to forestall, obstruct and prevent competitors and prospective competitors from engaging in the business of purchasing sugar beets and of manufacturing and selling refined beet sugar in interstate commerce.

(5) By inducing beet growers to break or cancel contracts for the production of sugar beets for competitors or prospective competitors by promises to build sugar factories when said respondent corpora-

tions have no intention of constructing same but make such promise solely for the purpose of causing breach of contracts for said production in order thereby to prevent or hamper the building of prospective competing factories or the operation of existing competing factories.

(6) By circulating and publishing false, misleading and unfair statements concerning the machinery and equipment of competitors or prospective competitors factories, or the fitness of such machinery to successfully manufacture refined beet sugar.

(7) By circulating and publishing false, misleading and unfair statements concerning the (a) ability of competitors or prospective competitors to get and pay for beet seed; (b) adaptability to raising sugar beets of land or territory in the localities where competitors are located or are intending to locate; (c) ability of competitors or prospective competitors to producers or growers for sugar beets contracted for or delivered to them.

(8) By making untruthful and unjustifiable statements against competitors or prospective competitors to induce, persuade and influence United States Government departments and agents, for the purpose of causing said Governmental departments or agents to use their power and authority to prevent the building of factories for the manufacture and sale in interstate commerce or refined beet sugar by competitors or prospective competitors.

(9) By offering to advertise in newspapers circulating in the localities of the States of Utah, Idaho, Oregon and Montana or elsewhere, where

competitors operate or prospective competitors intend to build and operate beet sugar factories, with the understanding that editorial policies shall be in favor of corporation respondents as against competitors in regard to the beet sugar industry. [192]

(10) By inducing beet growers or others, through false, unfair and misleading statements, to withdraw their support from, and to breach contracts for the growing of sugar beets with, competitors and prospective competitors in the manufacture and sale in interstate commerce of refined beet sugar, thereby depriving said competitors of, or hampering them in, the ability to compete with corporation respondents.

(11) By circulating and publishing false, misleading and unfair statements concerning the financial standing and responsibility of competitors or prospective competitors for the purpose of preventing or hampering the sale or disposition of the stocks, bonds and promissory notes of such competitors, or of otherwise causing said competitors financial embarrassment.

(12) By financing and furnishing money to secret and undisclosed agents or employees for the purpose of annoying, harassing and eliminating ment to competitors or prospective competitors by purchasing or acquiring secretly the whole or a controlling interest in the business of competitors or prospective competitors who are engaged, or who intend to engage, in the manufacture and sale of refined beet sugar in interstate commerce.

(13) By financing and furnishing money to secret and undisclosed agents or employees for the purpose of annoying, harassing and eliminating competitors and prospective competitors by instituting unjustifiable and groundless litigation and law suits.

(14) By circulating false, misleading and unfair statements in writing or orally concerning the honesty, integrity or ability of the promoters, officers or employees of competitors or prospective competitors engaged in or about to engage in the purchase of sugar beets and the manufacture and sale in interstate commerce of refined beet sugar.

(15) By utilizing any other equivalent means not hereinbefore stated of accomplishing the object of unfairly preventing, forestalling, stifling or hampering the business of competitors and of those about to compete with corporation respondents in the purchase of sugar beets and the manufacture and sale of refined beet sugar in interstate commerce.

No service of the complaint having been made upon the respondent, E. F. Cullen, IT IS FURTHER ORDERED that the complaint herein be, and the same is hereby, dismissed as to the said respondent, E. F. Cullen.

By the Commission, Commissioners Van Fleet and Gaskill, dissenting. Memorandum dissent by Commissioner Van Fleet attached.

[Seal] OTIS B. JOHNSON,
Secretary. [193]

June 4, 1923.

FEDERAL TRADE COMMISSION

vs.

UTAH–IDAHO SUGAR COMPANY et al.

DISSENT BY COMMISSIONER VAN FLEET.

In this case the respondents are engaged in the manufacture and sale of beet sugar. The sugar is sold in interstate commerce. The manufacture is intrastate. This proceeding is based on Section 5 of the Federal Trade Commission Act which declares unlawful unfair methods of competition in commerce. The fact that respondents are engaged in commerce in selling sugar produced has no bearing on the case for the reason that the proof does not show any acts of unfair competition in such product. The fact that a respondent is engaged in commerce is not material unless the acts charged have to do with such commerce or that of its competitors in such commerce. The acts to which the proof is directed are concerning only the manufacture. The manufacture of sugar from beets is somewhat peculiar in that it is necessary to have the factory located where beets may readily be obtained by short haul. It is not profitable to ship the beets a great distance to the factory. The acts to which the proof is directed consisted in the effort of respondents to prevent competing factories being located in contiguous territory where they might absorb a part of the supply of beets to respondents' factories. It was at most a pre-

vention of competition in the purchase of the raw material for manufacture within the state, and, in no case does the proof show an interference with the transport of beet from one state to another, or an interference with the purchase thereof.

It is well settled that production and manufacture is not commerce. Coe vs. Errol, 116 U. S. 517; Kidd vs. Pearson, 128 U. S. 1; United States vs. E. C. Knight Co., 156 U. S. 1; Capital City Dairy Co. vs. Ohio, 183 U. S. 238; McCluskey vs. Marsville & Northern Ry. Co., 243 U. S. 251; Arkadelphia Milling Co. vs. St. Louis Southwestern Ry. Co., 249 U. S. 134; The Coronado Case, 259 U. S. 344; Hammer vs. Dagenhart, 247 U. S. 251.

The fact that an article in process of manufacture is intended for export to another state does not render it an article of interstate commerce. Crescent Oil Company vs. Mississippi, 257 U. S. 129. But it is contended in support of the jurisdiction of the Commission that such interference with the source of supply of respondent's competitors affects the ability of such competitors to produce sugar to be sold in interstate commerce and that such acts are thus an interference with such commerce. This theory is based on those cased holding that intrastate acts which directly interfere with a current of commerce may be controlled by Congress. Swift vs. U. S., 196 U. S. 375; United States vs. Patten, 226 U. S. 525; United States vs. Ferger, 250 U. S. 199; Stafford vs. Wallace, 257 U. S. ——; Board of Trade of the City of Chicago vs. Olsen et al., U. S. Sup. Apr. 16, 1923. [194]

There is no conflict between the cases holding that production and manufacture are not commerce and the doctrine laid down in the Swift and following cases. In the first case there is no interstate commerce unless the acts themselves are such. In the second case there *already is* interstate commerce which is being affected or obstructed by the intrastate acts. Confusion may arise if the intrastate acts regulated under the doctrine in the Swift case be compared with intrastate acts where there is not already commerce.

Purely intrastate acts may or may not come under the Federal jurisdiction depending on whether they affect *existing* intrastate commerce. The *same acts* thus may or may not be subject to such jurisdiction. This is well illustrated in the two cases of Hill vs. Wallace, 42 Sup. Ct. Rep. 453; Board of Trade of the City of Chicago vs. Olsen et al., U. S. Sup. Apr. 16, 1923. When such acts are subject to such jurisdiction it is not because they are commerce, but because they affect or obstruct it.

In the present case there is no commerce to obstruct until the beets are manufactured into sugar and such sugar has been placed in transport. The argument is, however, as stated above, that the acts here cut off at the source such commerce. It is only such acts as *directly* interfere with commerce which come under the Federal jurisdiction. The line must be drawn somewhere, else all jurisdiction in trade or production would become Federal. Hence Congress has no jurisdiction of such acts as only indirectly or remotely affect commerce. In the

instant case if interference with production and manufacture into sugar of beets is an obstruction to a later or unborn commerce in sugar to be made from the beets, one with intrastate sold defective beet seed, thus preventing the production of beets to be manufactured into sugar, would be in commerce. Or one who sold fertilizer to raise the seed to plant the beets to make the sugar to be shipped in commerce would be in commerce.

(Signed) VERNON W. VAN FLEET,
Commissioner.

[Endorsed]: U. S. District Court, District of Idaho. Filed Mar. 14, 1924. W. D. McReynolds, Clerk. [195]

[Title of Court and Cause.]

ORDER CONFIRMING SALE OF REAL AND PERSONAL PROPERTY.

This cause came on further to be heard on the report of A. V. Scott, Receiver herein, dated March 1st, 1924, and the objections of the defendant to confirmation of the sale, filed herein on the 14th day of March, 1924, and on all other proceedings in the above-entitled cause, and the objections of the defendant to confirming the sale having been presented to the Court, and the Court being fully advised in the premises, finds, adjudges and decrees, as follows:

That the orders of the Court heretofore made herein requiring the Receiver to sell, after notice, all of the property of the defendant, Beet Growers

Sugar Company, a corporation, have been fully complied with, including the [196] requirements made by the Court in the supplemental order of sale dated February 7th, 1924, and due proof of the publication of notices of said sale have been filed herein;

That the sale of said property held on March 1st, 1924, was held in all respects as provided by the orders of this Court and according to the requirements of the published notices thereof;

That the property was sold as a single operating unit and that the bid of the Utah-Idaho Sugar Company, of Salt Lake City, State of Utah, for the sum of Eight Hundred Thousand ($800,000.00) Dollars was the highest and best bid received for said property;

That the said bidder has paid to the Receiver the sum of Ten Thousand ($10,000.00) Dollars to apply on the purchase price so to be paid for said property on confirmation;

On consideration,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows:

That the objections of the defendant, Beet Growers Sugar Company, to confirming the sale of said property so made by the Receiver be, and they are, hereby overruled and disallowed;

That the Receiver's report of sale filed herein is in all things confirmed, and the sale therein reported is hereby ratified and approved, subject to the rights of the defendant and other parties to the action to redeem said property from said sale within

the time prescribed in the original order of sale heretofore made herein, [197] to wit: the said defendant, Beet Growers Sugar Company, a corporation, shall have to and including the 15th day of June, 1924, within which to redeem said property from said sale, and if said defendant, Beet Growers Sugar Company, shall not on or before said date make redemption of said property, then and in that event any organization of the preferred stockholders of the defendant, Beet Growers Sugar Company, comprising at least thirty (30%) per cent of the outstanding preferred stock may, on or before the 15th day of September, 1924, redeem, provided and upon condition that said organization of said stockholders shall not exclude any preferred stockholder but that within a reasonable length of time all preferred stockholders may come into the said organization upon an equal footing, and the said right of redemption shall be further subject to the orders of the Court before made herein.

It is further ORDERED that any taxes which the purchaser may pay before the date of redemption shall be added to the amount to be paid by the redemptioner, with interest as provided in the orders of the Court in the case of the purchase money.

It is further ORDERED that the purchaser shall, within five days of the date hereof, pay to the said Receiver the further sum of Seventy Thousand ($70,000.00) Dollars, lawful money of the United States, and that on or before the 1st day of April, 1924, the said purchaser having agreed thereto it shall pay to said Receiver the further sum of Seven

Hundred and Twenty Thousand ($720,000.00) Dollars, lawful [198] money of the United States, and that if said purchaser shall make said payments on April 1st, 1924, then no interest shall be charged upon the purchase price.

That the real property sold by said Receiver as aforesaid, is particularly described as follows, to-wit:

> Those certain lots, parcels and pieces of land situate in the County of Jefferson, State of Idaho, particularly described as follows: Beginning at Southwest (SW.) corner of Section eight (8), Township four (4), North Range Thirty-nine (39), East of Boise Meridian, running thence East Eighty-three (83) rods, thence North Eighty (80) rods, thence East Seventy-seven (77) rods, thence North Sixty-three (63) rods, more or less, to the Parks and Lewisville Canal, thence along the said canal to the west line of said Section Eight (8); thence South One Hundred Twenty-seven (127) rods to the place of beginning, but subject to that certain right-of-way of the Oregon Short Line Railroad Company One Hundred (100) feet wide, running diagonally across the above-described land in a Northeasterly and Southwesterly direction, together with all buildings, structures, residences, beet sheds and other improvements upon said premises, and all canals, ditches and water rights appurtenant thereto, or used in connection therewith, together with all and singular, the tenements, hereditaments and ap-

purtenances thereunto belonging or in anywise appertaining.

The Receiver is directed, upon the payment and settlement of the purchase price as heretofore specified, or as may be permitted by any other order or any other decree made in this cause, and after the expiration of the period of redemption and there having been no redemption, to execute and deliver to Utah-Idaho Sugar Company, a corporation, its successors or assigns, the deed and bill of sale conveying to said purchaser, its successors or assigns, the property so sold to it as aforesaid and included within the said order of sale of date January 25th, 1924.

Dated March 15th, 1924.

FRANK S. DIETRICH,
United States District Judge.

[Endorsed]: U. S. District Court, District of Idaho. Filed Mar. 15, 1924. W. D. McReynolds, Clerk. [199]

[Title of Court and Cause.]

ORDER AUTHORIZING RECEIVER TO DISBURSE MONEY RECEIVED FROM SALE OF PROPERTY.

Upon consideration, It is Ordered:

1. That the Receiver go to Salt Lake City, Utah, to receive payment of the balance remaining unpaid on the purchase price of the sugar factory, and deposit the amount so received in three banks in Salt

Lake City to be selected by the Receiver with the view to safety and security, approximately one-third of the money so received to be deposited in each of said banks to the credit of A. V. Scott, Receiver, and the money so deposited shall be deemed to be in the possession of the Court.

2. That thereupon the Receiver forthwith pay out of the money so received and deposited to the Columbia Trust Company, plaintiff herein, the total amount due on account of the outstanding bonds as shown on Exhibit "A," attached to the "Order for Sale by Receiver," made herein and dated January 25th, 1924, namely the aggregate sum of $337,345.33, together with interest thereon, computed at the rate of seven per cent per annum from January 15th, 1924, to and including March 31st, 1924, said money so paid to the plaintiff, as trustee, to be held and distributed by it to the several creditors as set forth and specified in said Exhibit "A," without diminution or charge by or on the part of the plaintiff; it being the [200] intent hereby that the plaintiff as trustee shall pay to each of the persons named in said exhibit the amount therein stated to be due to each of said creditors, together with interest thereon at seven per cent for the period above named. Said payments to the creditors shall be made to them only upon receipt by the plaintiff trustee of all outstanding bonds, held either in absolute ownership or as collateral, and other evidences of indebtedness, by or for the use of said several creditors, and said bonds and other evidence shall by the trustee be delivered to the clerk of this court for cancellation.

3. The Receiver shall forthwith pay to the plaintiff trustee the additional amount of $10,000.00 on account of compensation for the trustee and for expenses, including counsel fees—$6,000.00 thereof to be paid over to counsel for the trustee. Inasmuch as the total amount to be paid for these purposes has not been finally fixed, such payment will be understood to be on account merely.

4. The Receiver is also directed to pay, without unnecessary delay, $3,196.79, together with interest thereon at the rate of seven per cent per annum from October 20th, 1922, to and including March 31st, 1924, to satisfy judgments referred to in paragraph 4 of said order for sale dated January 25th, 1924, either to the judgment creditors or to their counsel of record, the Receiver taking receipts therefor and requiring that said judgments be satisfied of record.

5. The Receiver is further directed, out of said moneys, to pay all unsecured claims against the defendant Beet Growers Sugar Company, together with interest thereon as provided for by the contracts covering such claims, or, where there is no contract, at the rate of seven per cent per annum from the due date of claims up to and including the [201] 31st day of March, 1924, provided said claims have been heretofore presented to the Receiver and audited by him and found to be correct. No such claims are to be paid until further order, unless they have been so presented and the Receiver is fully satisfied that they are justly due. In all cases of payment the Receiver will take up the evi-

dences of the indebtedness and take a receipt in full. In any case of doubt as to who is the present holder of the claim, payment should be withheld until the matter can be presented to the Court for further direction.

6. On or prior to the 15th of April, 1924, the Receiver is directed to prepare and file herein a full detailed report of all receipts on account of the sale of said property under said order of January 25th, 1924, and of all disbursements made of said receipts, with vouchers covering said disbursements, and with statements from each bank of deposit of the balance in said bank to the credit of the Receiver upon the specified day.

7. To the end that the Receiver may keep in his possession vouchers for disbursements, it is suggested that in each case of disbursement he take a receipt in duplicate so that he may retain the duplicate and file the original with the clerk.

Dated: Pocatello, Idaho, March 28th, 1924.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: U. S. District Court, District of Idaho. Filed Mar. 28, 1924. W. D. McReynolds, Clerk. [202]

At the March term of the District Court of the United States within and for the District of Idaho, begun and held at the City of Pocatello on the 14th day of March, A. D. 1924. Present: Honorable FRANK S. DIETRICH, Judge.

Among the proceedings had were the following, to wit:

COLUMBIA TRUST COMPANY,

Trustee,

vs.

BEET GROWERS SUGAR COMPANY et al.,

Defendants,

and

E. D. HASHIMOTO,

Intervenor.

MINUTES OF COURT—MARCH 14, 1924—ORDER RESALE OF PROPERTY, ETC.

This cause came up for hearing objections to the confirmation of the sale of the property by the Receiver. S. A. King, Esq., appearing in objection to the confirmation as counsel for the defendant Beet Growers Sugar Company. Otto McCutcheon, Esq., appearing as counsel for the Receiver.

The Court, after hearing counsel, confirmed the sale; allowing exceptions to the defendant Beet Growers Sugar Company. Exceptions were also allowed said defenadnt to the refusal of the Court to grant its petition of March 1st for the postponement of the Receiver's sale. [203]

[Title of Court and Cause.]

STATEMENT OF FACTS ON DEFENDANT'S APPEAL FROM ORDERS FOR RECEIVER'S SALE AND ORDER CONFIRMING SUCH SALE.

BE IT REMEMBERED, That * * * [203—1] on October, 18th, 1923, appellant filed an answer to plaintiff's amendment to its complaint.

Hearing on the complaint and amendments thereto, and upon Hashimoto's petition for sale and the answer thereto, was set for October 31st, 1923. On October 31st, 1923, one H. E. Deardorff, a creditor, was permitted to intervene, and accordingly filed an answer in intervention, among other things attacking the validity of the trust deed upon which the complaint is predicted. On the same day, to wit, October 31st, [203—5] 1923, the evidence taken before the Examiner was submitted, and testimony was also given in relation to certain issued presented by the complaint, and as to the expenses and compensation of the trustee and its attorneys, and also upon special issues raised by the petition for sale of the property as an entirety and without redemption. This latter testimony related mainly to the history of the enterprise, the construction of the plant, its operation for a short period before the receivership, description of the factory and appurtenant personal property, the extent of the tributary territory and competitive conditions, all having some bearing, remote or direct, upon the sale value of the property, if sold in entirety and

if sold in separate parcels; the feasibility of the sale in entirety and the feasibility of the sale in separate parcels; the probability or improbability of securing bidders in case a sale should be attempted with the right to redeem at any time within a year after the sale. Among other things the testimony tended to show that the property of the appellant consisted of a beet sugar factory, located on a 100-acre site near Rigby, Idaho, and in addition thereto personal property used therewith; that appellant has approximately thirty-four beet receiving stations located at various points in the beet growing territory, generally on leased land, with mechanical loaders and scales; that it also has auto trucks, cultivators, seeders, crane, extra parts for machinery, supplies, materials, etc.; that all of this personal property is necessary in the operation of the factory, and if sold separately from the factory would have to be replaced in order to operate the factory; that the beets are manufactured into sugar during a period from about October 10th or 15th to the middle of January the following year; that the Rigby factory is located in territory which may be served by factories of the Utah-Idaho Sugar Company, and there is competition for the beet acreage; that each year it is necessary to begin contracting with the farmers for beets the latter part of the winter or early spring for the growing of beets for that [203—6] season; that the failure to operate the factory in any one year results in competitors securing the beet acreage from the farmers, and loss of patron-

age to the factory on the resumption of operation; that it is customary for the best sugar company to furnish seed to the farmers, the seed being generally imported from Europe, and it is necessary to order it in time for the spring planting.

Intervenor, E. D. Hashimoto also introduced in evidence the certificate of the Secretary of State showing that the charter of the Beet Growers Sugar Company, an Idaho corporation, was forfeited on November 30th, 1922, for the nonpayment of the annual license tax required to be paid by the statutes of the State of Idaho.

Defendant introduced in evidence over the objection of intervenor, E. D. Hashimoto, a certificate from the Secretary of State of Idaho, showing that on July 27th, 1923, the Beet Growers Sugar Company paid to the Secretary of State of Idaho the sum of $163.00, and said Secretary of State thereupon issued a certificate of reinstatement for said corporation.

Intervenor's objection being based on the ground that it was immaterial and could not change or affect any vested right of the preferred stockholders resulting from said forfeiture and no authority on behalf of any individual to reinstate said corporation.

Thereafter elaborate briefs were filed, anl upon consideration the Court made and on December 28th, 1923, filed a memorandum decision in which there are certain findings of fact and a statement of certain conclusions, one of which was that a receivership sale and not a foreclosure sale should be had.

A further hearing for certain purposes was stated to be necessary, and January 7th, 1924, was designated as the time for holding it. Reference is made to this order for particulars, and especially for an exhibit of the condition of the receivership estate at that time. At the hearing on January 7th, some [203—7] additional evidence was received. touching certain claims, and in addition thereto the evidence taken in October, relative to the character and value of the property and the relation of the different parties to the whole and the value thereof, was supplemented as follows: [203—8]

TESTIMONY OF H. A. BENNING, FOR INTERVENOR.

Mr. H. A. BENNING was sworn and examined by Mr. Johnson, attorney for the intervenor and testified as follows:

In the past season I was joint lessee with Mr. Sinsheimer in the operation of the Beet Growers Sugar Company. We were the assignees of the lease of Hashimoto.

I am not a graduate engineer, I could qualify as a sugar house engineer. I am a member of the American Society of Mechanical Engineers. I have spent all my life in the construction and operation of sugar factories.

I was connected with the Holly Sugar corporation for five years as superintendent, entirely in charge of operations.

I started with the Great Western Sugar Company and finished as superintendent for five years.

(Testimony of H. A. Benning.)

I was general superintendent for the Amalgamated Sugar Company for four years. My occupation during these times was both in the construction and operation of the plants. I actually supervised the construction of three plants and assisted with three others and in rebuilding several.

I am familar with the Rigby plant of the Beet Growers Sugar Company. I operated that plant during the last campaign. It has a capacity of 750 tons. We haven't been able to do any better than that this season.

In my work in connection with the construction of plants I have become familiar with the value of sugar plants and the cost of building and equipping them in a general way.

In my opinion the value of the Beet Growers Sugar Company plant at Rigby as it stands in that locality is $500,000.00. It would cost in my opinion $100,000.00 for improvements to put the plant in good operating condition. The plant is situated in a territory where there are already five factories. This year there was a probable output of 250,000 tons in the entire territory, which is not enough for a factory of that size, a factory of that size should have at least two-fifths of the entire acreage, which it cannot possibly expect to get. We should have 9,000 acres to properly run the plant 90,000 tons. This year we have about 2500 acres and paid for 25,000 tons of beets. In its present condition the property has practically no beet dumps.

(Testimony of H. A. Benning.)

The $100,000.00 necessary for betterments should be expended for beet dumps and changing the beet distributing system in the sheds. In order to get additional acreage of beets we should have at least twelve additional receiving stations, which would cost at least $50,000.00. [203—9]

If we had reasonable tonnage of beets we would have to put in another railroad high line over the sheds to be used in unloading the beets and the distribution system for the beets should be changed and replaced by a belt conveying system instead of the distribution by means of water.

In a general way I am familiar with the cost of plants. The Smithfield factory of the Amalgamated Sugar Factory cost about $450,000.00 and this plant this last year had a slicing capacity of 1,087 tons, but this price did not include the beet dump-receiving stations, which would cost about $50,000.00 additional. The factory was constructed in 1917.

I based the value of the Rigby factory on its present locality, for a sugar factory is worth directly in proportion to the tonnage of beets it can get and this territory to produce the maximum capacity of beets would take several years to work up to that point. The plant is located in the poorest section of that territory, on account of there being very little wagon deliveries and this means most of the beets have to be shipped in with additional cost of freight.

In my opinion it would cost to reconstruct a plant equally as good as that with all beet loading sta-

Lake City to be selected by the Receiver with the view to safety and security, approximately one-third of the money so received to be deposited in each of said banks to the credit of A. V. Scott, Receiver, and the money so deposited shall be deemed to be in the possession of the Court.

2. That thereupon the Receiver forthwith pay out of the money so received and deposited to the Columbia Trust Company, plaintiff herein, the total amount due on account of the outstanding bonds as shown on Exhibit "A," attached to the "Order for Sale by Receiver," made herein and dated January 25th, 1924, namely the aggregate sum of $337,345.33, together with interest thereon, computed at the rate of seven per cent per annum from January 15th, 1924, to and including March 31st, 1924, said money so paid to the plaintiff, as trustee, to be held and distributed by it to the several creditors as set forth and specified in said Exhibit "A," without diminution or charge by or on the part of the plaintiff; it being the [200] intent hereby that the plaintiff as trustee shall pay to each of the persons named in said exhibit the amount therein stated to be due to each of said creditors, together with interest thereon at seven per cent for the period above named. Said payments to the creditors shall be made to them only upon receipt by the plaintiff trustee of all outstanding bonds, held either in absolute ownership or as collateral, and other evidences of indebtedness, by or for the use of said several creditors, and said bonds and other evidence shall by the trustee be delivered to the clerk of this court for cancellation.

3. The Receiver shall forthwith pay to the plaintiff trustee the additional amount of $10,000.00 on account of compensation for the trustee and for expenses, including counsel fees—$6,000.00 thereof to be paid over to counsel for the trustee. Inasmuch as the total amount to be paid for these purposes has not been finally fixed, such payment will be understood to be on account merely.

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5. The Receiver is further directed, out of said moneys, to pay all unsecured claims against the defendant Beet Growers Sugar Company, together with interest thereon as provided for by the contracts covering such claims, or, where there is no contract, at the rate of seven per cent per annum from the due date of claims up to and including the [201] 31st day of March, 1924, provided said claims have been heretofore presented to the Receiver and audited by him and found to be correct. No such claims are to be paid until further order, unless they have been so presented and the Receiver is fully satisfied that they are justly due. In all cases of payment the Receiver will take up the evi-

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7. To the end that the Receiver may keep in his possession vouchers for disbursements, it is suggested that in each case of disbursement he take a receipt in duplicate so that he may retain the duplicate and file the original with the clerk.

Dated: Pocatello, Idaho, March 28th, 1924.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: U. S. District Court, District of Idaho. Filed Mar. 28, 1924. W. D. McReynolds, Clerk. [202]

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if sold in separate parcels; the feasibility of the sale in entirety and the feasibility of the sale in separate parcels; the probability or improbability of securing bidders in case a sale should be attempted with the right to redeem at any time within a year after the sale. Among other things the testimony tended to show that the property of the appellant consisted of a beet sugar factory, located on a 100-acre site near Rigby, Idaho, and in addition thereto personal property used therewith; that appellant has approximately thirty-four beet receiving stations located at various points in the beet growing territory, generally on leased land, with mechanical loaders and scales; that it also has auto trucks, cultivators, seeders, crane, extra parts for machinery, supplies, materials, etc.; that all of this personal property is necessary in the operation of the factory, and if sold separately from the factory would have to be replaced in order to operate the factory; that the beets are manufactured into sugar during a period from about October 10th or 15th to the middle of January the following year; that the Rigby factory is located in territory which may be served by factories of the Utah-Idaho Sugar Company, and there is competition for the beet acreage; that each year it is necessary to begin contracting with the farmers for beets the latter part of the winter or early spring for the growing of beets for that [203—6] season; that the failure to operate the factory in any one year results in competitors securing the beet acreage from the farmers, and loss of patron-

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Defendant introduced in evidence over the objection of intervenor, E. D. Hashimoto, a certificate from the Secretary of State of Idaho, showing that on July 27th, 1923, the Beet Growers Sugar Company paid to the Secretary of State of Idaho the sum of $163.00, and said Secretary of State thereupon issued a certificate of reinstatement for said corporation.

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TESTIMONY OF H. A. BENNING, FOR INTERVENOR.

Mr. H. A. BENNING was sworn and examined by Mr. Johnson, attorney for the intervenor and testified as follows:

In the past season I was joint lessee with Mr. Sinsheimer in the operation of the Beet Growers Sugar Company. We were the assignees of the lease of Hashimoto.

I am not a graduate engineer, I could qualify as a sugar house engineer. I am a member of the American Society of Mechanical Engineers. I have spent all my life in the construction and operation of sugar factories.

I was connected with the Holly Sugar corporation for five years as superintendent, entirely in charge of operations.

I started with the Great Western Sugar Company and finished as superintendent for five years.

(Testimony of H. A. Benning.)

I was general superintendent for the Amalgamated Sugar Company for four years. My occupation during these times was both in the construction and operation of the plants. I actually supervised the construction of three plants and assisted with three others and in rebuilding several.

I am familar with the Rigby plant of the Beet Growers Sugar Company. I operated that plant during the last campaign. It has a capacity of 750 tons. We haven't been able to do any better than that this season.

In my work in connection with the construction of plants I have become familiar with the value of sugar plants and the cost of building and equipping them in a general way.

In my opinion the value of the Beet Growers Sugar Company plant at Rigby as it stands in that locality is $500,000.00. It would cost in my opinion $100,000.00 for improvements to put the plant in good operating condition. The plant is situated in a territory where there are already five factories. This year there was a probable output of 250,000 tons in the entire territory, which is not enough for a factory of that size, a factory of that size should have at least two-fifths of the entire acreage, which it cannot possibly expect to get. We should have 9,000 acres to properly run the plant 90,000 tons. This year we have about 2500 acres and paid for 25,000 tons of beets. In its present condition the property has practically no beet dumps.

(Testimony of H. A. Benning.)

The $100,000.00 necessary for betterments should be expended for beet dumps and changing the beet distributing system in the sheds. In order to get additional acreage of beets we should have at least twelve additional receiving stations, which would cost at least $50,000.00. [203—9]

If we had reasonable tonnage of beets we would have to put in another railroad high line over the sheds to be used in unloading the beets and the distribution system for the beets should be changed and replaced by a belt conveying system instead of the distribution by means of water.

In a general way I am familiar with the cost of plants. The Smithfield factory of the Amalgamated Sugar Factory cost about $450,000.00 and this plant this last year had a slicing capacity of 1,087 tons, but this price did not include the beet dump-receiving stations, which would cost about $50,000.00 additional. The factory was constructed in 1917.

I based the value of the Rigby factory on its present locality, for a sugar factory is worth directly in proportion to the tonnage of beets it can get and this territory to produce the maximum capacity of beets would take several years to work up to that point. The plant is located in the poorest section of that territory, on account of there being very little wagon deliveries and this means most of the beets have to be shipped in with additional cost of freight.

In my opinion it would cost to reconstruct a plant equally as good as that with all beet loading sta-

(Testimony of H. A. Benning.)

tions complete from $650,000 to $700,000—a plant equal in capacity which amounts to the same thing.

Cross-examination by Mr. KING.

I never have had an occasion to examine this property for the purpose of determining the replacement value, have made no examination for this purpose.

The value of the factory site was small in proportion to the property.

I think there was something like 100 acres and in that locality I think the land is worth $5,000. I could buy a better factory site in that valley a little farther north for $5,000.

I do not know what the cost of constructing the main factory building was. I am taking my valuations from what you could contract with the Dyer Construction Company or other iron works, for a factory building. I never have personally entered into any contract for the construction of a factory of this capacity.

I do not know what would be the replacement value of the main factory building and could not say what the replacement value of the sugar warehouse would be. [203—10]

I think the machine-shop and store-room could be replaced for about $20,000.00 and the warehouse from possibly 15,000 to $20,000. The warehouse is a reinforced concrete building and is from 180 feet to 200 feet long and from 60 to 70 feet wide and 25 feet high. It has steel trusses and proper lights, the floors are concrete.

(Testimony of H. A. Benning.)

I do not know what it would cost to replace the power house, or boiler house or laboratory, or lime kiln building or the reinforced concrete chimney. I don't think a chimney of that kind could be replaced for $15,000, but it ought to be constructed for less now than the time it was built, but I do not know how much less. I have constructed similar smoke stacks—just as high for $7,000.00.

I know only in a general way what it would cost to replace the beet sheds complete, I would say it would be about $45,000 but havn't any figures for that. The beet sheds are constructed with water distributing equipment, and I think they are less than the ordinary beet sheds are. I would say it would take about $30,000 to tear them down and to re-build them. Some of these sheds are constructed of the best material. There is no other beet sheds in the western country built like they are

I think the pulp silo could be replaced for $25,000 but do not know what it would cost for the sewer and water lines.

I would not say at all that $13,300 would be at all disproportionate. I haven't any real judgment what it would cost to replace the molasses tank, but one of 1200 ton capacity would cost close to $5,000, during the war it might have cost $9,000 to construct it. I think that the replacement of cranes complete could be done for $15,000 but do not know what it would cost to replace the garage implements and store house, nor what it would cost to replace the power house. I would not say that it

(Testimony of H. A. Benning.)

could be done for less than $65,000. I would not attempt to state the price of the equipment for the lime house. The factory was designed by Mr. Cooper whom I knew very well, he had set ideas. At the time it was contracted the estimated cost was about $800,000 but it cost 50% more because of premiums necessary to get delivery

Many of the articles that went into the building were purchased during war times and took a premium to get the proper deliveries. I do not think that the prices in effect during 1922 would be extortionate. I do not know what the value of the machinery and equipment and sugar bins would have [203—11] been during 1922. As late as May, 1922, $590,000 would be disproportionate, but I did not build a factory that year and made no estimates as to what it would cost to build the factory, and the figures which I gave in my direct testimony were not based on my estimate obtained as to the actual cost of construction. I did not mean when I estimated the plant at $590,000. I did not base those figures on what the factory would cost. My estimate was merely on the value of the factory in its present location, operating from one-fourth to one-half capacity.

I don't know that the company itself had contracted for over 7,000 acres of beets. They might have produced 6300 acres but they never got the tonnage which was justified in that many acres. Sixty-three hundred (6300) acres might be sufficient to supply the beets necessary. I did not mean to

(Testimony of H. A. Benning.)

imply that there were only 2500 acres adjacent to the factory available. I think we can get more acreage than that.

I know there are a lot of tools, drills and machinery used in connection with the factory and would not say that in May, 1922, their valuation was not $15,000.

There are a lot of portable beet loaders and they were in constant use prior to my leasing the property. I consider them a liability to the company.

Mr. Sinsheimer and myself are not figuring on bidding on the property and Mr. Sinsheimer has not been in consultation with Mr. Hashimoto and others about bidding on the property that I know of. Mr. Sinsheimer has not told me that he was figuring on purchasing the plant. I am a partner with him in the lease and last year we handled 25,000 tons of beets and produced 59,750 bags of sugar. We paid $60,623.00 for the lease.

On the present market price of sugar we would have a profit of over $50,000 for operating the factory. It is not a fact that with present market conditions our profit would equal $125,000.00, I wish it were. I do not think it would be over $60,-000. So that this year the operation on an acreage of 2500 acres there was a profit on the operation of the property of at least $110,000. Of course $60,000 of this money was used to bring up the crop and rebuild the factory, but there was actually earned about $110,000.00, and I think about $20,000.00 of this went for agricultural expenses. We earned not

(Testimony of H. A. Benning.)

over $60,000, but I think the net earnings would be $100,000.00 and out of that taxes and other expenses would have to be paid, and this is best year sugar companies have seen in a long time and probably will see. [203—12.]

The company has what is called railroad and high line dumps. If I had the plant I would tear them down, also scales and scale houses of the value of possibly $12,500, and autos, trucks and trailers worth possibly $25,000.00. There were only three that we could make run this year, and I think there are about thirty-four different loading stations tributary to the factory where there are scales and they are necessary to the operation of the factory. These loading stations are with exception of one or two located on leased ground.

I have not seen the report prepared by James J. Burke & Company and I know Mr. Fred G. Taylor, and he is in many ways a competent mill and machinery man and had some experience in building factories.

I know Mr. J. F. Featherstone and I have heard he has had considerable experience. I know him personally. I worked under Mr. Taylor as assistant manager for one year. I would consider his estimate and description of the property as reliable, owing to his standing, as a general thing.

I have never personally contracted for the construction of any plants but have worked for companies, have had actual charge of construction work, but without figuring the cost of construction,

(Testimony of H. A. Benning.)

an engineer always figures the cost. I have contracted for some companies which I have been connected with and have helped in rebuilding other factories. I have contracted for the Holly Sugar Company.

I did not assist in the construction of the Ogden plant or in rebuilding it, but I was connected with the company at that time and the improvement work amounted to about $700,000. The capacity was 1400 tons daily.

I wouldn't say that the original cost of construction was over $1,500,000, and that approximately $700,000 additional was spent to rebuild it. I would not think that it would cost $1,400,000.

The map shown me correctly represents the Rigby plant, the railroad adjacent with the best lines constructed around the valley and roads as they are constructed approximately ten townships and the railroad reached the very heart of the farming district so that no beets will have to be hauled more than three miles to reach the railroad.

In the assignment of the lease from Mr. Hashimoto we had to pay him a little additional amount for the lease privileges. I do not remember the result. He is not interested in the lease.

The average freight haul in that territory is about 40 cents a ton. The average freight haul runs from 25 cents to 85 cents, but would [203—13] average about 40 cents. We paid from 25 cents to 85 cents.

Mr. JOHNSON.—That is all. We have not other

(Testimony of H. A. Benning.)

information available at this time as to the value of the plant.

Mr. KING.—(Representing Beet Growers Sugar Company.) If your Honor please, in not anticipating the testimony that would be taken this afternoon, we have no witness that we could place on the stand to-day, but we could be ready by to-morrow morning. Of course we assume that Burke's report under date of May 24, 1922, is in, and will be considered, and if your Honor cares to have us do so we would present additional evidence on this proposition.

The COURT.—I am used to a wide range of testimony, but this is pretty nearly the limit, the difference between $500,000 and $1,300,000, is very great. I understood the witness to make the estimate of the replacement value at $650,000.

The witness, Benning, was thereupon asked what he meant by replacement, and he stated as the plant is, and that he arrived at that figure from an estimate from the Dyer Company, but that it would not be a duplicate of the plant. The Rigby plant would cost a little more in concrete construction. More than brick. The Rigby plant is well constructed, but out of balance. Some units are a little larger than necessary and some are smaller which results in limiting the capacity, but I think with an expenditure of $45,000.00 the capacity could be increased from 800 tons a day to 1000 tons a day, and I think the plant could be increased by efficient organization with the present equipments.

(Testimony of H. A. Benning.)

I did not base my estimate on the Dyer figures but was taking into consideration the cost of construcing a new plant in Minnesota.

I did not get this information for the express purpose of bidding on the Rigby plant.

Taking everything into consideration the entire plant, personal property and loading stations, I would estimate the cost to replace it as a whole from $650,000.00 to $700,000.00.

The COURT.—From the testimony of the last witness it would seem that the preferred stockholders would be without interest in this plant. [203—14]

There are so many factors that enter into any estimate which would be made of an enterprise of this kind or a plant of this kind and the testimony of this witness as given was material on one of the factors, but is not quite adequate to cover the whole proposition, so I would like to hear some additional testimony to-morrow.

The testimony of what it would cost to replace the plant is not very satisfactory and could not be so unless someone has made an estimate of it and gone over the plant with a view of giving such testimony, and that is one way of getting at the value of the plant for the reproduction cost. It is not conclusive but it is always material unless it can be shown that it is ill-advised or antiquated or for some reason it is not the kind of a plant that should be there. I think I will let the matter go over until to-morrow morning and I think you had better

give some consideration to the advisability of a lease for the current year as well, and possibly you might be able to work out some sort of a scheme by which these preferred stockholders would be protected. I intend up to a certain point to protect all of the preferred stockholders, that is I shall in some manner give them an opportunity to protect themselves and care for their interests and give them adequate opportunity of doing that. If it cannot be done one way it will have to be done in another. If it cannot be done in fixing an upset price it will have to be done in giving them time. I agree with the Intervenor that I would much prefer to dispose of the property outright, if it could be sold for a reasonable price, but it is difficult to determine what would be a fair price in view of the wide range of testimony as it now exists.

Hearing continued to January 8th, 1924.

Mr. STORY.—Your Honor, I would like to make a suggestion or two. Since yesterday's session I have given the matter a good deal of thought. It seems to me to be apparent that if the property is sold at the upset price, such as your Honor has in mind, the sale would be abortive and would simply result in a great deal of delay. I have already stated the reasons for desiring the earliest possible sale. Incidentally, it was [203—15] suggested that perhaps the property should be leased this year. I hadn't expressed an opinion on that subject. I have also given that a good deal of thought. One reason why I was most anxious to have the

property sold without redemption was because I felt that it would bring a larger price, and that failure to do so would result in the property remaining in idleness this year. Counsel suggested yesterday, and again yesterday evening that the property might be leased. I think your Honor also made that suggestion. If the lease could be made immediately so that the lessee could immediately start to get contracts, which I think is of the utmost importance, I have reached the conclusion it is the wise thing to do.

Your Honor suggested, also, that you were going to protect the unsecured creditors and preferred shareholders either by fixing the upset price such as your Honor has suggested, or allowing time before the sale within which they might organize their forces to purchase, or that you would sell with redemption. I suggested to your Honor yesterday that I thought under the facts as you had indicated you had found them in your memorandum opinion, even a sale under foreclosure would give the plaintiff the right to have the sale made without redemption. So far as we are concerned, we feel that the immediate sale of the property is of far more importance than the question of redemption. If the property can be sold under foreclosure at this time without endangering the possibility of the sale being avoided by fixing some large upset price, we would be very glad to have it sold in foreclosure with the equity redemption allowed by law, and we withdraw our request for the sale without re-

demption, and in that event, I think, of course, two things should be done, first, that the unsecured creditors should be placed in a position wherein they can protect themselves by having their claims allowed against the defendant corporation which would give them the right of redemption under the law. In the second case, your Honor would be very much interested in having the property purchased at a price which would of course cover the payment of the receiver's certificates which have just been issued. As I understand the receiver's report, the receiver's certificates which had been issued prior to those issued within the last few days will be covered entirely, paid by the rental of the property for this last year, payment of which is secured by [203—16] adequate bond, so that, so far as the coming sale is concerned, it probably would not be necessary to do more than provide for the payment of the *some* sixty thousand dollars of receiver's certificates. I think it would also be desirable from the standpoint of the bond holders, some of whom have not deposited their bonds with the Columbia Trust Company, to have an upset price fixed in a foreclosure sale which would cover the secured debts, such as the bonds and the receiver's certificates. I think we are all agreed that the property is of at least that value.

The COURT.—Mr. Johnson, you perhaps, have initiated on behalf of your client, at least, the idea of selling without redemption, I think.

Mr. JOHNSON.—I will say to the Court the consideration which moved us to ask for that kind of

sale in the main was this: That the property be sold and preserved as a unit, the real estate and personal property be kept together and not segregated, and that further that kind of sale would enable the purchaser to operate this year, and for that reason would bring more. In other words, a person who could take possession would be willing to pay more if he could operate it. In other words, it could be sold for more, and kept as a going concern. If there is a sale under foreclosure with redemption I am not sure how it could be done, whether this would be sold as a unit, kept together as a unit, redeemed as a unit, or whether it would have to follow the ordinary foreclosure proceedings, and have the personal property sold separately and then—

Mr. STORY.—Could it not be agreed that it be sold as a unit?

The COURT.—The personal property is of such small amount, I think no serious difficulty would be experienced in arranging for a sale so it can be kept together. Probably all parties would agree that would be better. I think that has been agreed all along, that it would be better, yet not an insurmountable difficulty to sell with redemption. While you think it would sell better together, still you wouldn't want that to be considered as an insurmountable obstacle.

My present impression with the testimony yesterday and the other as I have it is such that I wouldn't see the property sacrificed without some prolonged effort to get what it is reasonably worth.

Mr. JOHNSON.—Of course, I think if the Court could in its order [203—17] provide that the unsecured creditors, and the ones following after that, the preferred shareholders, could have the right of redemption, I think that would adequately protect their rights. If the property were sold at an inadequate figure, the more apt it would be for redemption—the chances are greater for redemption. If sold for an adequate figure, they are protected. If sold for far less than its value, then of course, there is the right of redemption, which would adequately protect them.

Thereupon it was suggested that there were certain unsecured claims which had not been adjudicated and the exact amount of all of the indebtedness of the Beet Growers Sugar Company had not been fully settled and determined and it was agreed that E. J. Broberg, former auditor of the company, together with the Receiver, should audit the claims and report the entire amount to the Court and that orders should be made authorizing the appointment of Mr. Broberg and the Receiver for this purpose, and that these amounts, when found due, should be settled and paid as an obligation of the company, from any funds remaining in the hands of the Receiver, after paying the preferred claims and the costs of the receivership.

That if there were any unsecured claims disputed, that these matters should be referred to the Court for final determination.

(Testimony of Joseph F. Featherstone.)

Thereupon a witness on behalf of the defendant company was called, sworn and testified for the company as follows:

TESTIMONY OF JOSEPH F. FEATHERSTONE, FOR DEFENDANT.

My name is JOSEPH F. FEATHERSTONE. I reside at Logan and have had experience in the beet sugar business for 17 years. I have been identified with the Utah-Idaho Sugar Company, the Amalgamated Sugar Company, The West Cache Sugar Company, and the Beet Growers Sugar Company. I served for the Utah-Idaho Sugar Company as Superintendent of Field Labor. And with the Amalgamated I was Superintendent of Labor and Superintendent of Agriculture, with the West Cache; I was Agricultural Superintendent first and then became General Manager and was General Manager for the Beet Growers Sugar Company —during the years 1920, 1921 and part of 1922.

While engaged in the sugar business I have become familiar with beet sugar factories and their operation, and have observed the construction of two or three factories and particularly the construction of [203—18] the West Cache factory, and I know the type of factories in this country.

The Beet Growers Sugar Company factory at Rigby is a very modern mill of its type, that is, it being a non-Steffenshouse. It has a capacity, I think, of fully 800 tons of beets in twenty-four hours. Its construction is of steel and reinforced concrete. The

(Testimony of Joseph F. Featherstone.)

machinery in it is of the most modern machinery that we have in our up-to-date sugar mills.

I have had occasion to determine the cost of construction of the factory together with the loading stations and equipment used in connection with it.

I had charge of the records and files relating to the costs of construction of the Rigby factory, and knew the cost price of material and of the contracts. The factory was not completed when I became general manager. We spent for the completion of the factory and the equipment something over $171,000 after I became general manager. The cost and construction of the factory and field equipment independent of commissions for the sale of stock was $1,350,000.00. In addition to that the company paid commissions for the sale of stock and money for the securing of contracts for the growing of beets, and for this the company paid approximately $200,000.00 additional.

I had occasion to examine the physical condition of this factory in May, 1922, with Mr. Taylor, who was then connected with the Amalgamated Sugar Company. We made an examination into the general quality of the machinery of the mill, and at the same time I became acquainted with Mr. Byer, engineer for the James J. Burke Company, and I went over the plant and equipment with him for the purpose of aiding him to prepare a report upon the replacement value of the mill and plant and supplied him with information and blue-prints of the factory and assisted him in preparing his report.

(Testimony of Joseph F. Featherstone.)

I have seen his report presented with an inventory of the property. This inventory is correct and sets forth the factory site, buildings and other property. I have also seen the inventory of the property prepared by the receiver and that is correct. [203—19]

There is usually some depreciation each year. We usually reduce the price of buildings and machinery five per cent each year, so this amount should be deducted from the report of Mr. Byer. The field equipment—auto-trucks and other equipment of this sort—we usually deduct from eight to ten per cent each year, and these deductions, in my judgment, ought to be made from the valuation placed upon the property by Mr. Byer in 1922.

From my knowledge of the actual physical condition of the plant—machinery and other property—I would think that at the present time that a reasonable value of the property would be from $950,000.00 to $1,000,000.00. That includes everything.

The property itself is located on the branch line of the Oregon Short Line Railroad Company between Idaho Falls and Ashton, Idaho, and we have what is called the "high line" railroad. It is the high line at factory, it is not tributary but is the main receiving station.

The report states that there are approximately thirty-four loading stations and that report is correct.

In 1920 we produced 79,700 bags of sugar and in up; in 1920 there was approximately 6,000 acres. In 1920 they actually harvested somewhere around

(Testimony of Joseph F. Featherstone.)

4,200 acres and I think 4,400 in 1921. There were more acres actually placed in cultivation, and there was a portion of the crop destroyed, and there were about thirty per cent of the crops destroyed by frost in the early part of June; in 1920 and 1921 there was some disease in that locality that was prevalent throughout Utah and Idaho; it was a form of rot which caused about 2,500 acres of our beets to ferment and disappear about harvest time.

In 1920 we produced 79,700 bags of sugar and in addition to that there were other by-products of molasses and things of that sort; in 1920 our net profits from the operation of the plant was somewhere around $180,000. This of course was after the paying of all expenses such as interest upon bond indebtedness, taxes and everything of that nature. The taxes were not paid, but we deducted them.

There are no other factories of this type operated by either the Utah-Idaho or the Amalgamated that is considered a better type. If there [203—20] is any better factory of this kind it is a Steffenshouse. It would be more desirable. There is a plant at Delta, Utah, which might be a little better, but the Rigby plant is very well equipped with the most modern machinery, and has an auxiliary station. It is an electrically operated plant.

While general manager I made investigations as to what it would cost to increase the capacity from 800 tons to 1,000 tons. We would *have add* one more filtering units and some addition to the evapo-

(Testimony of Joseph F. Featherstone.)

rators. I think the mill is large enough to slice one thousand tons at the present time. I haven't made any investigation to determine the cost of adding these additional units. I think it would not exceed $15,000.00 or $20,000.00. The acreage is scattered over considerable territory. We purchased beets in practically all the territory that is used by the Utah-Idaho with its four factories.

We have portable loaders used in the beet fields and in order that the beets might be handled economically it was necessary to use the portable loaders, so we could install at the largest of those stations and then move them along from place to place along the railroad and pick up the beets. These loaders were the most modern type, and we were able to deliver under our system beets at the factory of the average of 700 tons a day.

I think if it was generally known that the factory was financed and equipped to carry on its operation we could secure five or six thousand acres with ease.

There are approximately 2,200 stockholders in the company. A large number (not a majority) of them are farmers and raise beets.

Beets can be shipped from Northern Utah to the Rigby factory, just as they are shipped to the Utah-Idaho plants at Idaho Falls and Sugar City from Utah.

Many of the stockholders reside in Northern Utah.

The construction of the buildings are of concrete and steel.

(Testimony of Joseph F. Featherstone.)

Cross-examination by Mr. JOHNSON.

The capacity of the factory is usually limited by the beet acreage, so that there would be no necessity of increasing the capacity of the factory unless the acreage was increased. There is ample acreage in the vicinity of the plant to furnish all of the beets required. [203—21]

The Utah-Idaho have shipped beets from Utah, that is because they did not have sufficient acreage. It isn't because there isn't sufficient acreage.

There has not been one year when the Utah-Idaho factories in that vicinity have not operated. The Utah-Idaho's Blackfoot factory was idle in 1922 and the Shelley factory of the Utah-Idaho was idle two or three years, because of lack of beets.

I am not an engineer; my experience is not entirely confined to field work; I have had charge of the operation of the factory. I was in charge of the Beet Growers' factory, also the West Cache for two years. While I have not constructed plants I have had charge of reconstruction of both the West Cache and the Rigby plant. I remodeled almost the entire Rigby plant, except moving the main engine. I never have had charge of complete construction of a factory, but have had charge of buying additional machinery and installing it. In the West Cache I increased the capacity of 150 tons a day. The first year the Rigby factory was run we had an average capacity of 300 tons a day. The first year I was there I brought the average up to 525 tons and the last year 700 tons a day, with many

(Testimony of Joseph F. Featherstone.)

days more than 800 tons. We averaged 800 tons daily for one week and could have kept that up if we could have received the beets fast enough.

I am qualified to state the cost of equipment and installation of the Rigby factory. I have made inquiries with reference to prices recently. I sent a man to see a contracting engineer and got the information from them. I know in a general way the cost of putting up a building and placing therein the equipment, and the purchasing of all outside parts.

The main building of the Rigby plant will cost, roughly speaking, $175,000.00 I have checked the cost of buildings of that kind and similar buildings at the West Cache. I have checked the prices of material, including the cast-iron castings, steel castings, pipe and labor and compared the same with prices as of April 24th, 1922, when Mr. Byer made his appraisal, to some extent, not in very great detail. [203—22]

I am not now engaged in the sugar business.

In 1920 my recollection is when I was at Rigby we had a profit of $180,000. When we began the 1920 campaign we had a deficit of about $17,000.00 from the previous campaign.

In 1920 we got $500,000 on a contract for sugar and were not required to deliver the sugar. We delivered about one carload of sugar under this contract.

The $500,000 we received was used for paying

(Testimony of Joseph F. Featherstone.)

the mortgage on the property and overdrafts, totaling approximately $422,000.00.

In computing the net profits from the operation we took into consideration the $500,000. We considered the gross income and deducted from that all expenses in order to reach the net income. We arrived at the net profit after paying all expenses of every kind and nature in connection with the operation, including interest on money, but of course did not include the $422,000, or the $350,000 mortgage that was in existence at that time. Mr. Broberg can give the figures. I think the gross profits for that year would have amounted to $266,000. Of course that year nearly all of the sugar companies lost money because sugar dropped to about $6.00 when they were paying $13.00 a ton for beets. All of the sugar factories lost money on account of sugar being carried over from 1920 to 1921. Factories lost from $500,000 to $1,000,000 apiece. But for the windfall of $500,000.00, we would have lost money. We lost the next year.

Getting the $500,000 was a good deal and by some might be called windfall and if we had a bad year they would have called it bad management. Of course getting the $500,000 put us in better shape than many of the other factories. We made our sugar and tendered it to the purchasers, but they refused to accept the delivery, because they could buy upon the market sugar much cheaper than our contract price. There ought to be a change now from the water system of delivering beets in the factory.

(Testimony of Joseph F. Featherstone.)

The sugar men and engineers figure the cost of a factory on tonnage basis, that is, a 600 ton capacity cost approximately $600,000, and an 800 ton a day factory roughly $800,000. This would be pre-war figures. Just a rough estimate. I don't know that the Smithfield factory, a 1,000 ton plant did not cost in excess of $500,000. I think the factory cost $450,000. Possibly $50,000 for dumps.

When I said this plant cost $1,350,000, these are the figures of Mr. Byer, but I checked the cost of labor on the plant and the cost of material [203—23] and found that I reached the figures of $1,350,-000 and those figures were carried on the books of the company and are a part of the records of the Company. They are not my figures.

In 1920, I think we carried the fixed assets of about $1,107,000, and since that time there has been $171,000 added to the fixed assets. This was done during 1920 when certain improvements were made on the property and new field equipment added. In 1922 there was field equipment added in the sum of $23,000, and there was $50,000, or $60,000, added to the plant during that time in new machinery, completion of the building.

In May, 1920, I think the buildings, machinery and equipment was carried on the books of $1,262,-000, this would be before the $60,000 I spoke of was added.

Cross-examination by Mr. STORY.

I was manager of the plant at the time the Receiver was appointed in October, 1922.

(Testimony of Joseph F. Featherstone.)

The fixed assets were in October, 1922, carried at $1,350,000. The plant at that time was carried at $1,189,000, real estate and trackage at $27,000; machinery and field equipment $23,000; laboratory equipment $3,000; office equipment $4,000; stationery $2,000.

While working for the Utah-Idaho and the Amalgamated Sugar Company I was field superintendent, and nothing to do with operating the factories, and had nothing to do with the accounting department of either company, but I did have an opportunity of knowing the costs of operations. I received complete classification of accounts and knew the general system of accounting maintained.

At the West Cache I had charge of accounts and operations for two years. That was the only experience I had of that kind aside from the Beet Growers Sugar Company.

I furnished Mr. Byer the information in reference to the equipment in the Rigby factory and gave him the blue-prints so that he would be enabled to value the property. I didn't do anything with respect to prices or checking up current prices. [203—24]

At the request of Mr. King yesterday I made investigations of the cost price of material, including steel and iron castings, machinery, lumber and labor and procured the prices for both years, 1923 and 1922. In this investigation I spent about 30 minutes. I conferred with the Oregon Short Line Railroad purchasing department this morning,

(Testimony of Joseph F. Featherstone.)

about 60 days ago I sent a man to see the Lynch Cannon Construction Company, who have had experience in building sugar factories.

The appraisal made by Mr. Byer was in connection with the report being submitted to Los Angeles Financiers for the purpose of either selling the plant or selling securities of the company. Mr. Byer was there a day and a half. When I said I remodeled most of the plant I meant that I did so because of original faulty construction.

Redirect Examination by Mr. KING.

The Cannon Hutchens Company have constructed a sugar factory in Japan. It is a subsidiary of Lynch Cannon. Locally they are recognized engineers. In giving the figures and cost price which I did, I was comparing the prices now with April, 1922.

At the time the company received the $500,000 as advanced price for the sale of sugar, I suggested then to the company that this money should be deposited in a large banking institution and that the indebtedness of the company would then be easily refunded and many financial difficulties avoided, but my suggestions were not followed, and if they had, the company would not have been in trouble.

Cross-examination by Mr. STORY.

The beet loaders that I referred to were called the Featherstone type and cost approximately $40,000. We had four of these and two called Deering Loaders.

End of Mr. Featherstone's testimony.

The appraisal report made by James J. Burke & Company, engineers and contractors of Salt Lake City, on the beet sugar factory and loading stations at Rigby, Idaho, was made May 24th, 1922, and gives the replacement value at that date of all the buildings and machinery of the main factory itself, together with thirty-four outside loading stations, and the report included the report of Mr. Fred G. Taylor on the capacity and quality of the machinery in the mill and the report of J. F. Featherstone on the physical condition and description of the property.

These reports show that the factory site consists of one hundred acres on which is located the modern beet sugar plant completed and first operated in 1920, together with complete subsidiary buildings. The report shows that all buildings, structures and equipment are in good repair and well taken care of.

The factory consists of one main building, with additions consisting [203—2] of sugar warehouse, machine shop, storeroom, power house, boiler house, office, locker room and laboratory, lime kiln house and concrete chimney, beet sheds, beet trestles, wagon dump with conveyor to beet sheds, railroad trestles, pulp silo, sewer and water lines, molasses tank, locomotive crane and all the sugar making machinery, together with ten four-room frame cottages, and with electric lights and running water, together with brick garage and frame house for the

field tools and equipment, together with thirty-four outlying loading stations as follows:

4 Railroad highline loading stations.

2 Inland highline loading stations with storage bins for loading trucks.

13 Portable railroad loading stations, which are served by four Featherstone and two Deer loaders.

15 Inland piling stations.

All of said stations being equipped with ten-ton wagon scales. The company possessing in all forty ten-ton wagon scales.

The size and character of buildings referred to are as follows:

MAIN BUILDING.

60′0″ wide by 208′0″ long—three and five stories high. Independent steel frame with concrete walls, concrete floors, composition roofing or wooden sheathing, wooden doors, steel sash.

SUGAR WAREHOUSE.

60′0″ wide by 160′0″ long—one story high, 23′1½″ from floor to bottom chords of steel trusses. Steel trusses and purline resting on concrete walls, concrete floor, composition roofing on concrete roof slab, wooden doors, steel sash.

MACHINE SHOP AND STOREROOM.

60′0″ wide by 39′0″ long—two stories high. Construction similar to main building.

POWER HOUSE.

45′4″ wide by 39′0″ long—one story high with basement. Steel trusses and purline resting on

concrete walls. Concrete floors, composition roofing on concrete roof slab, wooden doors, steel sash.

BOILER HOUSE.

45′4″ wide by 112′6″ long—one story high. Steel rafters resting on concrete outside walls, interior steel columns, steel framing for supporting steel coal bunkers, composition roofing on concrete roof slab, wooden doors, steel sash.

OFFICE LOCKER ROOM AND LABORATORY.

20′0″ wide by 39′0″ long—three stories high. Construction similar to main building. [203—26]

LIME KILN BUILDING.

48′0″ wide by 48′0″ long. Lower portion concrete walls, concrete floors, steel roof framing. Upper portion steel frame covered with corrugated steel. This is a separate building apart from the factory buildings proper. Capacity of Belgiam Lime Kiln is 3048.9 cubic feet.

REINFORCED CONCRETE CHIMNEY.

8′6″ inside diameter by 210′0″ high.

BEET SHEDS, BEET TRESTLES AND WAGON DUMP WITH INCLINED CONVEYOR.

139′6″ wide by 400′0″ long. Standard wood construction concrete flumes, railroad highline, wagon dump with inclined conveyor, steel cross conveyor bridge. Capacity 8000 tons of beets.

PULP SILO.

125′0″ wide by 375′0″ long. Standard wood construction. Capacity level full 12,500 tons of pulp.

SEWERS AND WATER LINES.

A pipe line conveys water from the canal to the factory and a 24″ concrete sewer carries away the waste material.

MOLASSES TANK.

35′ diameter by 29′ high—steel—capacity 1231 tons.

LOCOMOTIVE CRANE.

Orton and Steinbremer—15 ton capacity—60′ boom.

GARAGE, IMPLEMENT AND STORE HOUSE.

Brick garage of size to accommodate six trucks, six trailers and six automobiles. Implement house and outside store house of frame construction for tools and field equipment during inter-campaign.

OUTSIDE LOADING STATIONS.

The location of the thirty-four outside loading stations with respect to the main factory is shown on the attached map.

The appraisal value based on replacement value of date of May 24th, 1922, is as follows: [203—27]

Factory site—10 acres	$ 10,000.00
Main factory building	149,300.00
Sugar warehouse	53,600.00
Machine shop and store room	14,000.00
Power house	11,900.00
Boiler house	30,200.00
Office room, Locker room and Lab.	4,200.00
Lime Kiln Building	16,100.00
Reinforced concrete chimney	10,500.00
Beet sheds complete	74,600.00

Pulp silo	11,800.00
Sewers and water lines	13,300.00
Molasses tank	9,400.00
Locomotive crane complete with bucket, etc.	12,500.00
Garage, Implement and storehouse	4,600.00
Boiler House Equipment Installed	103,700.00
Power House Equipment Installed	62,500.00
Lime House Equipment Installed	14,500.00
Warehouse Equipment Installed	4,500.00
Machine Shop and Storeroom Equipment Installed	19,500.00
Main Sugar Mill Equipment Installed	590,000.00
Ten Frame Cottages	20,000.00
Farm Tools, drills, etc.	15,000.00
Portable Beet Loaders	35,000.00
R. R. and Inland highlines	30,000.00
Scales and scale houses	12,500.00
6 3½-ton trucks	
6 5-ton Troy Trailers, valued at	25,000.00
1 Quad Truck	
Total	$1,358,200.00

The evidence of the valuation of the property having been submitted, the Court stated, "some matters I shall have to take under advisement for two or three days, and it will probably take that long to form a decree. You may prepare a form of decree, Mr. Story, the regular form of foreclosure decree, leaving blank such matters as I have not passed upon. Some of them, I cannot pass on just at the present time. The decree will re-

serve authority to fix an upset price, and, as is customary, reserve the power to reject any bid that may be made for the property. I assume from what has been said here this morning, that it is agreeable to all that this decree shall provide that the property be sold as a unit, regardless of the fact that some of the property is purely personal, and some has a very doubtful status, and that if redeemed it shall be redeemed as a unit. This statement was agreed to by counsel for all parties. [203—28]

The COURT.—The sale will have to be made subject to the lease. If anyone has any provision as to any specific provision to go into this decree, if anything occurs to you from time to time before Mr. Storey formulates the decree, you might suggest the matter to him and ask for a provision covering the point you have in mind. Of course I do not want the decree enlarged beyond necessity. So far as the mode of sale is concerned that is fixed by statute anyway, and the decree may simply follow the statute, but there are other things that may occur to you. I should like to have the form of decree at the earliest possible moment. I shall at once upon my return to Boise give attention to unfinished matters. Are there any other suggestions as to the decree?

Mr. JOHNSON.—Some suggestion has been made as to the method of determining the amount of the unsecured—

Mr. KING.—That isn't in the decree.

Mr. JOHNSON.—I am assuming that is agreeable.

The COURT.—We will go into that in a moment. That does suggest the inquiry as to whether any provision ought to go into the decree touching the right of unsecured creditors to redeem. I think someone made the suggestion this morning. If they are to have such a right, wouldn't it have to be conferred upon or reserved to them in some way by the decree?

Mr. RICHARDS.—Unless they are given the status of judgment creditors the statute gives them the right.

The COURT.—That might be hazardous. It would be better to put it in the decree by the consent of the parties, so that perhaps you had better provide that any one or all who are now secured creditors may redeem within the year, that is, anyone who is recognized as a creditor by the order of this court allowing the claim. We shall have to have an order fixing the amounts of the several claims.

Mr. KING.—I think there ought not to be any judgment for the unsecured claims at this time, but there would be no serious objection on the part of the company that they may redeem within a given period, and if they do not exercise the right of redemption the unsecured creditors may thereafter redeem. In other words, that [203—29] would be subject to the right—

The COURT.—I am not quite sure whether I can do that. I am trying to let the statute cover

the whole subject of redemption. You have a year under the statute. If you redeem at all it would be within a year. How could I limit it to six or seven or eight months?

Mr. HENDERSON (Of Counsel for Defendant). Of course we could waive in favor of other parties.

The COURT.—I think perhaps the decree had better fix the status of any general creditor whose right is declared by the order as that of a lienholder. I do not recall the exact language of the State statute. Perhaps you had better have that before you when you draw the decree, Mr. Storey, and try to fix the status the same as any other redemptioner.

Now are there any other suggestions in regard to the decree. If not, we will pass from that for the moment. [203—30]

Thereupon provision was made for the prompt auditing and allowance of numerous claims of general creditors, most of which had been presented to and filed with the Receiver; and after further conference upon the subject of handling the property for the ensuing year an order was made authorizing the Receiver promptly to take steps for leasing of the property for the year 1924 and 1925. Whereupon the court at Pocatello adjourned. * * * [203—31]

Even with this incentive to bidders, the Utah-Idaho Sugar Company was, in fact, the only bidder at the sale.

The foregoing, consisting of thirty-three typewritten pages, inclusive of this sheet, is hereby settled and allowed as defendants' statement of

facts upon appeal from order for Receiver's Sale and order confirming such sale.

FRANK S. DIETRICH,
Judge.

September 13, 1924.

[Endorsed]: Filed Sept. 16, 1924. W. D. McReynolds, Clerk. By M. Franklin, Deputy. [203—33]

United States of America,
District of Idaho,—ss.

I, W. D. McReynolds, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copy of statement of facts on defendant's appeal from order for Receiver's sale and order confirming such sale in the cause of Columbia Trust Company, as Trustee, plaintiff, vs. Beet Growers Sugar Company, a Corporation, et al., defendants, and E. D. Hashimoto, intervenor, and also A. V. Scott, Receiver of the Beet Growers Sugar Company, No. 364, Eastern Division has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said Court in said District this 17th day of September, 1924.

[Seal] W. D. McREYNOLDS,
Clerk.
By M. Franklin,
Deputy.

[Endorsed]: No. 4249. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 20, 1924. F. D. Monckton, Clerk. [203—34]

[Title of Court and Cause.]

RECEIPT OF COPY OF PETITION, ETC.

We hereby acknowledge receipt of copy of the petition for an appeal filed herein, copy of assignments of error, filed herein, together with copy of bond on appeal and copy of citation issued by the Court.

Dated this 31st day of March, A. D. 1924.

WM. STOREY, Jr.,
Solicitors for Plaintiff.

A. V. SCOTT,
Receiver.

DEY, HOPPAUGH & MARK,
Solicitors for Intervenor.

R. W. YOUNG,
By W. T. PYPER,
Solicitors for Utah-Idaho Sugar Company.

[Endorsed]: Filed April 2, 1924. W. D. McReynolds, Clerk. [204]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Filed —— A. D. 1924, in the District Court of the United States in and for the District of Idaho, Eastern Division.

To the Honorable FRANK S. DIETRICH, District Judge of the United States District Court, in and for the District of Idaho, Eastern Division:

The above-named defendant, Beet Growers Sugar Company feeling itself aggrieved by the decree made and entered in this cause on the 25th day of January, 1924, and entitled in this cause "Order for Sale by Receiver" as amended and supplemented by the "Supplemental Order of Sale" entered herein by the Court on the 7th day of February, 1924, and the "Order Confirming Sale of Real and Personal Property" made and entered herein on the 15th day of March, 1924, does hereby appeal from said decree and orders to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that its appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree and orders were based, duly authenticated, may be sent to the [205] United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

And your petitioner further prays that the proper order touching the security to be required of it to perfect its appeal be made and desiring to supersede the execution of the decree, petitioner here tenders bond in such amount as the Court may re-

quire for such purpose, and prays that with the allowance of the appeal a supersedeas be issued.

SAMUEL A. KING,
MARIONEAUX, KING & SCHULDER,
HERBERT R. MacMILLAN,
MARSHALL MacMILLAN & CROW,
H. H. HENDERSON,

Solicitors.

The appeal is allowed. Bond for costs fixed at $200.00.

FRANK S. DIETRICH,
Judge.

March 29, 1924.

[Endorsed]: Filed March 29, 1924. W. D. McReynolds, Clerk. [206]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Now, on the 30th day of March, 1924, comes the defendant Beet Growers Sugar Company, a corporation, by its solicitor Mr. S. A. King, and says that the decree entered in the above-entitled cause on the 25th day of January, 1924, entitled "Order for Sale by Receiver," as amended and supplemented by the "Supplemental Order of Sale" entered herein on February 7, 1924, and the order confirming the sale, ordered as aforesaid, entered on the 15th day of March, 1924, are erroneous and injurious to the defendant.

ASSIGNMENT OF ERROR No. 1.

For that the Court erred in its order of the 25th day of January, 1924, in requiring appellant's right of redemption to be exercised within six months following the date of the approval of sale.

II.

For that the Court erred in its said order of sale [207] in providing that the appellant company should have the exclusive right of redemption during only the first three months following date of the approval of sale, and in limiting its right to redeem during the three months remaining after the expiration of the first three months following the date of the approval of the sale, to a prior right during the latter three months period of said six months period, of an organization of the preferred stockholders, as set forth in said order of sale.

III.

The Court erred in failing to provide in said order that appellant should have and be allowed a period of one year following the date of the approval of sale in which to redeem from said sale.

IV.

For that the Court erred in requiring by the said order of sale that as a condition to the right of redemption granted by said order, appellant should pay, in addition to the purchase price paid by the purchaser at the sale, with interest thereon at the rate of ten per cent, and additional penal sum of $15,000.00.

V.

For that the Court erred in giving to the said, or

any, association of preferred stockholders, any right of redemption prior to the expiration of one year following the date of the approval of the sale.

VI.

For that the Court erred in refusing to pass upon the merits of said requests to postpone the date of sale, as prayed for by appellant in its petition of March 1st, 1924, and referring said request for a continuance to the receiver.

VII.

For that the Court erred in confirming the said sale [208] for the following reasons:

(a) For that it was made to appear by the record that after the entry of order of sale herein, of the 25th day of January, 1924, the property of the defendant company so ordered to be sold, had been by order of the Court leased to the Utah-Idaho Sugar Company at a fixed rental for the year 1924 of $115,000.00, and by giving to the property so ordered sold, a value of approximately $1,150,000.00.

(b) For that it appears by the record that said sum of $115,000.00 was sufficient to pay all of the outstanding Receiver's certificates and the taxes and expenses of said receivership incurred up to date and to accrue for the year 1924, and would leave a balance of approximately $75,000.00, applicable to the payment of interest and the reduction of the company's debts.

(c) For that it appears by the record that the fair and reasonable market value of the property sold, was a sum in excess of $1,150,000.00, and that the price realized upon said sale results in the loss

of ninety per cent of the money invested by the stockholders of appellant in said property.

(d) For that it was made to appear by the record that the purchaser at said sale was the Utah-Idaho Sugar Company, a corporation, and it was further made to appear by the record namely, by appellant's objection to the confirmation of said sale, that the Utah-Idaho Sugar Company was incompetent to purchase said property at said sale, for that heretofore a certain action was instituted and commenced by the Federal Trade Commission of the United States of America against said Utah-Idaho Sugar Company and other defendants, which said action has Docket No. 303, said proceedings being under Section 5 of the Act of September 26, 1914, known as the Federal Trade Commission Act, and passed by the Congress of the United States of America; [209] that the said Federal Trade Commission issued and served its complaint herein and the said Utah-Idaho Sugar Company filed its answer in said proceedings, admitting certain of the allegations of said complaint and denying certain others thereof; that thereafter hearings were had before said Commission, testimony was taken, arguments were made, and thereafter findings of fact and conclusions were duly made, rendered and entered by the said Federal Trade Commission on the 3d day of October, 1923, and on said date a judgment and restraining order was issued in said proceeding against the said Utah-Idaho Sugar Company and other defendants therein, and in and by the said judgment, it was found and decided that

the said Utah-Idaho Sugar Company being then and there engaged in interstate commerce, in shipping and selling beet sugar throughout the United States of America, undertook to prevent the successful operation of the said Beet Growers Sugar Company and the erection of its factory, by making false and unfair and misleading statements to farmers, to induce them to refuse to raise beets for appellant company, and to stockholders of appellant company and persons intending to become stockholders thereof, to the effect that the appellant company would be unable to secure the necessary funds to purchase machinery and building materials for its factory, and that the land in the vicinity of said factory was unfit for the production of sugar beets, and that it would be unable to pay for any sugar beets which farmers might produce for it, and that the promoters of appellant company were dishonest and that they were engaged in a dangerous and dishonest promotion; and that said Utah-Idaho Sugar Company had made false and misleading statements to the effect that this appellant company was insolvent and in the hands of bad management and that its enterprise would be unsuccessful and that by said means it undertook to and did succeed in inducing prospective purchasers [210] of stock of appellant company to refrain from investing therein and succeeded in impairing the financial standing and reputation for integrity of the officers of appellant company and that the object of said Utah-Idaho Sugar Company in making said false and misleading statements against appellant's enterprise and against the character of its officers, was to elimi-

nate appellant from the business of manufacturing sugar and shipping and selling the same in interstate commerce. And said tribunal thereupon ordered, adjudged and decreed that the said Utah-Idaho Sugar Company should forever cease and desist from conspiring or combining with others named in the said decree, to prevent the establishment and building and successful operation of appellant's sugar factory at Rigby, Idaho, and from hindering, forestalling, obstructing and preventing appellant from engaging in the purchase of sugar beets and in the manufacture and sale of refined beet sugar in interstate commerce.

And by the said decree the said tribunal further adjudged and decreed, that the said Utah-Idaho Sugar Company, should cease and desist from using its power and influence so as to discourage competitors and prospective competitors, including this appellant from engaging in the purchase of sugar beets and the manufacture and sale of refined beet sugar in interstate commerce, and from using its financial power and influence to purchase land and erect factories in the territory where competitors or prospective competitors intend or shall undertake to start in the business of purchasing sugar beets and manufacturing and selling refined beet sugar in interstate commerce, when such purchases and erections are not done in good faith and for no other purpose than to forestall, obstruct and prevent competitors and prospective competitors from engaging in the business of purchasing sugar beets and of [211] manufacturing and selling beet sugar in interstate commerce.

And it was further made to appear by appellant's said petition objecting to said confirmation, that the inability of this appellant to pay off and discharge the indebtedness, for the payment of which the sale of its property was ordered by the Court, was due to the said misconduct of the said Utah-Idaho Sugar Company, in violation of the provisions of said Act of September 26th, 1914, known as the Federal Trade Commission Act, and particularly in violation of Section 5 of said Act, and that the financial embarrassments which led to said foreclosure were caused by misconduct upon the part of said Utah-Idaho Sugar Company, which by the said judgment and decree of said tribunal, it was ordered and required to cease and desist from.

WHEREFORE, this appellant prays that said orders and decrees of the said District Court be reversed and the said sale be vacated and annulled and that in any order hereafter entered in this cause in said District Court for the sale of said property, this appellant shall be allowed the exclusive right of redemption for the period of one year from the date of confirmation of sale, and that said Utah-Idaho Sugar Company shall not be permitted at any such sale to become a purchaser, and that appellant have its costs in said District Court and upon appeal.

SAMUEL A. KING,
MARIONEAUX, KING & SCHULDER,
HERBERT R. MacMILLAN,
MARSHALL, MacMILLAN & CROW,
H. H. HENDERSON,
Solicitors for Appellants.

[Endorsed]: Filed March 29, 1924. W. D. McReynolds, Clerk. [212]

"Bond on appeal usual form in the sum of $200.00 executed and filed in conformity with the order of the Court." [213—214]

[Title of Court and Cause.]

WRIT OF ERROR.

The President of the United States, to the Honorable Judge of the District Court of the United States, for the District of Idaho, Eastern Division, GREETING:

Because, in the records and proceedings as also in the rendition of decree entered in the above-entitled cause on the 25th day of January, 1924, entitled "Order For Sale by Receiver," as amended and supplemented by the "Supplemental Order of Sale" entered herein on February 7, 1924, and the order confirming sale, ordered as aforesaid, entered on the 15th day of March, 1924, manifest error has happened to the great damage of the Beet Growers Sugar Company, plaintiff in error, as by their complaint appears.

We being willing that error, if any hath happened, shall be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf duly command you, if judgment be therein given, that then under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Judicial

Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date of this writ in the said Circuit Court of [215] Appeals, to be then and there held, that the records and proceedings aforesaid, being inspected, this said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States this 29th day of March, 1924.

[Seal] W. D. McREYNOLDS,
Clerk of the United States District Court for the District of Idaho, Eastern Division.

[Endorsed]: U. S. District Court, District of Idaho. Filed Mar. 29, 1924. W. D. McReynolds, Clerk. [216]

[Title of Court and Cause.]

CITATION ON WRIT OF ERROR.

United States of America to Columbia Trust Company, as Trustee, a Corporation, Plaintiff, E. D. Hashimoto, Intervenor, and A. V. Scott, Receiver, GREETINGS:

You are hereby notified that in a certain case in equity in the United States District Court in and for the District of Idaho, wherein Columbia Trust Company, a corporation, is complainant, E. D. Hashimoto, is intervenor, A. V. Scott, is Receiver,

and Beet Growers Sugar Company, a corporation, are defendants, an appeal has been allowed the Beet Growers Sugar Company, a corporation, defendants therein to the United States Circuit Court of Appeals, Ninth Circuit. You are hereby cited and admonished to be and appear in said court at San Francisco, State of California, thirty days after the date of this citation, to show cause, if any there be, why the orders and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable FRANK S. DIETRICH, Judge of the United States District Court for the District of Idaho, this the 29th day of March, A. D. 1924.

FRANK S. DIETRICH,
United States District Judge.

[Seal] Attest: W. D. McREYNOLDS,
Clerk.

[Endorsed]: U. S. District Court, District of Idaho. Filed Apr. 2, 1924. W. D. McReynolds, Clerk. [217]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please incorporate the following pleadings, orders, minute entries and statements of evidence in the transcript on appeal in the above-entitled cause:

1. Complaint in equity, with trust deed attached.

2. Amendment to bill of complaint.
3. Defendant's answer to plaintiff's complaint.
4. Order appointing Receiver.
5. Answer of Beet Growers Sugar Company to amendment to bill of complaint.
6. Supplemental bill of complaint.
7. Complaint in intervention of E. D. Hashimoto.
8. Order permitting complaint in intervention to be filed.
9. Petition of Receiver for authority to lease property.
9–a. Order to take complaint in intervention *pro confesso.* [218]
10. Petition of intervenor to sell all of the property of the defendant company without redemption.
11. Defendant's answer to petition of intervenor.
11–a. Petition of intervenor to extend powers of Receiver.
12. Order of Court extending powers of Receiver.
12–a. Order of Court re claims dated Apr. 17, 1923.
13. Order of Court authorizing Receiver to solicit bids for lease of property.
14. Memorandum decision under date of December 28, 1923.
15. Order of January 8, authorizing Receiver to solicit bids for the lease of the property for the year 1924.
16. Order of January 8, authorizing Receiver and Auditor of company to determine amount of unsecured claims.

17. Memorandum order of sale of property by Receiver.
18. Order of sale by Receiver.
19. Supplemental order of sale.
20. Objections by defendant to proposed decree.
21. Objections of Beet Growers Sugar Company to proposed order of sale by Receiver.
22. Copy of lease of property for year 1924.
23. Petition and objections of defendant asking the Court to postpone sale of property to July 1st, and to fix proper period for redemption.
24. Order of the Court in relation to postponement of sale.
25. Order fixing time for hearing application to approve sale.
26. Petition and objections filed by defendant, Beet Growers Sugar Company to report of Receiver asking confirmation of sale of property.
27. Order confirming sale of property.
28. Order authorizing Receiver to disburse money received from sale of property. [219]

29. Minute entries of the Clerk of the court in relation to the ordering of sale of property and objections made to orders of sale and to confirmation of the same, together with exceptions entered by defendant.

30. Statement of evidence given before the Court in respect to value of property and sale of the same, received January 7th and 8th, 1924, together with petition for appeal, assignments of error, order al-

lowing appeals, undertaking on appeal, together with receipts showing service of papers on appeal.

SAMUEL A. KING,
MARIONEAUX, KING & SCHULDER,
Attorneys for Defendant, Beet Growers Sugar Company.

Dated this 25th day of April, 1924.

Received copy of the foregoing praecipe this 26th day of April, 1924.

WM. STORY, Jr.,
Attorney for Plaintiff.
DEY, HOPPAUGH & MARK,
Attorneys for Intervenor.
_____,
Attorneys for A. B. Scott, Receiver.

[Endorsed]: U. S. District Court, District of Idaho. Filed Apr. 28, 1924. W. D. McReynolds, Clerk. By M. Franklin, Deputy. [220]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages, numbered from 1 to 221, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above-entitled cause, and with the exception of the bill of exceptions which will be forwarded at a later date upon its settlement by the

Court, constitutes the transcript on appeal, to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the praecipe of the appellant, a copy of which is included herein.

I further certify that the cost of the record, as now constituted, amounts to the sum of $44.00, and that the said amount has been paid by the appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this court, on the 30th day of April, 1924.

[Seal] W. D. McREYNOLDS,
Clerk U. S. District Court. [221]

[Endorsed]: No. 4249. United States Circuit Court of Appeals for the Ninth Circuit. Beet Growers Sugar Company, a Corporation, Appellant, vs. Columbia Trust Company, a Corporation, as Trustee, E. D. Hashimoto, Intervenor, and A. V. Scott, Receiver, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Idaho, Eastern Division.

Filed May 2, 1924.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

September 16, 1924.

DESIGNATION OF PARTS OF RECORD TO BE OMITTED IN PRINTING RECORD.

Clerk Circuit Court of Appeals,
San Francisco, Calif.

Dear Sir:

In re: Beet Growers Sugar Company.

In the preparation of the Record for the printer, you will leave out the following portions of the Record:

1. Omit paragraph 4 of the Complaint on pages 2 and 3, and in lieu thereof add, "Defendant, Beet Growers Sugar Company executed its Deed of Trust and mortgage covering all its property, both real and personal for the security of its bonds."

2. Omit paragraph "Va" on page 5.

3. Omit paragraph 6.

4. Omit page 6 and that portion of page 7 relating to page 6.

5. Omit all of pages 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24, and add in lieu of these pages, "copy of form of bonds authorized and description of property mortgaged."

6. Omit all of pages 31–2, and in lieu of these pages simply state "Duties of Trustee defined."

7. Omit pages 35 and 36, adding in lieu thereof, "Duly acknowledged."

8. Omit page 138, adding in lieu thereof: "Bonds in hands of claimants, $337,345.35."

9. Omit page 145.

10. Omit all of pages 149, 150, 151, 152, 153, 154, 155 and 156 and add in lieu of this. "Copy of lease

executed to Utah-Idaho Sugar Company for year beginning August 1, 1922, to March 1, 1925, amount paid for lease $115,000."

11. Omit page 176 and add in lieu thereof: "Petition duly verified by George E. Sanders March 13, 1924."

12. Omit page 213 and 214 and add in lieu thereof, "Bond on appeal usual form in the sum of $200.00 executed and filed in conformity with the order of the Court."

13. In addition to the foregoing, after giving title to all pleadings aside from first one, add in lieu thereof, "Title, Court and Cause."

14. Omit all the verifications adding in lieu thereof, "Duly verified."

15. Omit copying Order appointing Receiver, adding in lieu thereof "Order appointing Receiver in usual form."

16. Omit order permitting Complaint in Intervention to be filed, adding in lieu thereof, "Order permitting Complaint in Intervention to be filed granted."

17. Omit petition of Receiver for authority to lease property, adding in lieu thereof, "Petition of Receiver asking authority to lease property filed."

18. Omit order of Court authorizing Receiver to solicit bids for property adding in lieu thereof "Order issued authorizing Receiver to solicit bids for lease of property."

19. Omit order approving lease to E. D. Hashimoto for 1923–4, adding in lieu thereof "Order approving lease to E. D. Hashimoto granted."

20. Omit order of January 8th, authorizing Receiver to solicit bids for lease of property for 1924, adding in lieu thereof, "Order issued January 8th authorizing Receiver to solicit bids for lease of property for year 1924."

21. Omit order of January 8th authorizing Receiver and Auditor of Company to determine amount of unsecured claims, adding in lieu thereof, "Order issued authorizing Receiver and Auditor to determin*ing* amount of unsecured claims."

22. From the Statement of Facts which you will hereafter receive, on the first page beginning "Be it remembered that" on the first line, then omit the balance of page 1, all of page 2, all of page 3, all of page 4 and down to and commencing with the words, "On October 18th, 1923" on page 5, so that it will read, "Be it remembered that on October 18, 1923, appellant filed, etc."

23. We are not familiar with the exact paging of the latter portions of the Statement of Facts, but you will find on the third or fourth page from the end of the Statements of Facts a paragraph ending, "Whereupon the Court at Pocatello adjourned," After the word "adjourned" you will omit the balance of that page, all of the succeeding page and all of the next page down to the words, "Even with this incentive to bidders the Utah-Idaho Sugar Company was in fact the only bidders in the sale."

In your Statement of Facts, where these portions are omitted, it will be just as well to put in an asterisk or two showing that portions of the Statement have been omitted, but they are not essential to the

questions to be determined and for that reason we have omitted them.

Yours very respectfully,

KING & SCHULDER.

By KING.

SAK/NR.

[Endorsed]: No. 4249. United States Circuit Court of Appeals for the 9th Circuit. Beet Growers Sugar Company, a Corporation, vs. Columbia Trust Company, a Corporation, et al., etc. Designation of Parts of Record to be Omitted in Printing Record. Filed Sep. 17, 1924. F. D. Monckton, Clerk.